

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KALSHIEX LLC,
594 Broadway, New York, NY 10012,

Plaintiff,

v.

COMMODITY FUTURES TRADING COMMISSION,
1155 21st St NW, Washington, DC 20581,

Defendant.

No. 23-cv-_____

COMPLAINT

INTRODUCTION

1. This action challenges a final order by the Commodity Futures Trading Commission (CFTC or Commission) prohibiting Plaintiff KalshiEX LLC (Kalshi) from offering certain event contracts for trading on its federally regulated exchange. The Commission's order (Order) exceeds its statutory authority under the Commodity Exchange Act (CEA), 7 U.S.C. § 1 *et seq.*, and is arbitrary, capricious, and otherwise contrary to law. This Court should therefore vacate it.

2. Event contracts are financial instruments that entitle a purchaser to payment based on the occurrence or non-occurrence of a real-world event. Like other derivatives, they are used as a tool to mitigate risk. For example, consider a yes/no contract on whether a major hurricane will make landfall on the Gulf Coast. A hotel chain might acquire "yes" contracts as a hedge against closed beaches. Conversely, a construction firm focused on storm repair work might buy "no" positions as a hedge against lost revenue. If a major hurricane does hit, the hotel chain will receive a payout; if not, the construction company will. Each has hedged its risks.

3. This case involves event contracts based on political events, meaning those relating to the composition or activities of government. Political events carry enormous financial implications for businesses and individuals. Will Congress pass funding legislation before an impending shutdown? Will the EPA promulgate a new limit on tailpipe emissions? Will the Federal Reserve cut interest rates by the end of the year? Those are real examples of event contracts offered in the market, by Kalshi and others. For good reason: Uncertainty surrounding these events poses economic risk, no less than uncertainty over hurricanes, pandemics, or oil supply.

4. Beyond their economic hedging benefits, political event contracts serve the interests of the public by harnessing the unparalleled power of free markets to produce high-quality, dynamic predictive data. They offer the public a unique window into traders' perceptions of future political developments. Commentators and media thus often cite—alongside polling data—prediction market data, including from two institutions that offer contracts based on the results of elections: PredictIt and the University of Iowa's Iowa Electronic Markets (IEM) platform.

5. Under the CEA, exchanges registered and regulated by the CFTC may list event contracts for trading by the public. Congress made the judgment that these derivatives should be presumptively permissible. The CFTC is empowered to prohibit event contracts only if they (1) “involve” illegal activity, terrorism, assassination, war, gaming, or a “similar activity” that the CFTC determines by rule or regulation to be contrary to the public interest, and (2) are determined by the Commission to be “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C).

6. Kalshi operates a regulated exchange that allows members of the public to trade event contracts. Its mission is to create opportunities for individuals and small businesses to hedge risk in ways previously available only to large corporations using bespoke products designed by investment banks.

7. In June 2023, Kalshi sought to list contracts contingent on whether a particular party will control the House of Representatives or Senate as of a particular date (Congressional Control Contracts). Those contracts do not involve unlawful acts, terrorism, assassination, war, or gaming. The CFTC thus has no power to prohibit them. Nor are they in any way contrary to the public interest. Congressional Control Contracts would enable hedging against economic risks associated with one party's control of Congress. And their fluctuating prices would provide useful predictive data to the public. Hundreds of public comments—from noted academics, real business owners, and former CFTC officials, among others—explained all of this.

8. The CFTC blocked Kalshi's contracts anyway. It reasoned that the statute empowers it to ban event contracts whenever the *act of trading* on the contract would *amount to* one of the enumerated activities—not merely when the *event underlying* the contract *involves* such an activity. Trading on a contract that depends on the result of an election, the Commission continued, amounts to “gaming” and may also violate some state gambling laws, because it stakes money on a contingent event. Having found the Congressional Control Contracts subject to public-interest scrutiny, the CFTC concluded that the contracts fail it, because they supposedly would further no “economic purpose” while threatening election integrity.

9. The Order's analysis fails at every step. It contorts and misapplies the CEA's text, ignores its structure and purpose, allows a narrow exception to swallow the rule, and engages in faulty and unsupported reasoning.

10. To start, the Commission's "amounts to" test bungles the statute's text. Trading an event contract can *never* amount to terrorism, assassination, or warfare. Accordingly, the only way to make sense of the provision as a whole is to read the CEA's reference to contracts that "involve" those activities as focused on the contract's *underlying event*. For example, the Commission may prohibit a contract contingent on whether the President will be assassinated, because the contract's underlying event involves an assassination, and the CFTC may reasonably determine that it would be contrary to the public interest for a contract to pay out if the President is assassinated. On that common-sense reading, the Congressional Control Contracts are not subject to public-interest review, because partisan control of a congressional chamber involves neither "gaming" nor "unlawful" activity.

11. On its flawed reading of "involve," however, the Commission found that buying a Congressional Control Contract would amount to "gaming" or gambling prohibited by state law because purchasers would stake money on a contingent event, which some states define as gambling. But buying one of these contracts is nothing like betting on a game of chance or even the Super Bowl. Elections are not a game; they have real economic consequences. Nor did Congress implicitly empower 50 state legislatures to ban event contracts through the backdoor; just the opposite, Congress gave the CFTC exclusive jurisdiction and preempted contrary state law.

12. The Commission’s interpretations of “involve,” “gaming,” and “unlawful” cause the CEA’s narrow exceptions to swallow its general rule. If the CFTC may ban any event contract so long as buying or selling that contract would amount to illegal “gaming,” and if illegal gaming includes staking money on any contingency, the CFTC could prohibit *any* event contract based solely on its view of the public interest. Had Congress intended to confer such sweeping authority on the CFTC, it would have said so. Instead, it authorized the Commission to undertake public-interest review of event contracts *only* if they fall into one of the enumerated categories.

13. The CFTC’s public-interest analysis—which it had no authority to conduct in the first place—is just as flawed as its statutory construction. Applying an invented “economic purpose” test, the Commission dismissed comments from economists, investment bankers, and real business owners, all of whom identified demonstrable hedging benefits associated with the Congressional Control Contracts. The Commission instead improvised heightened requirements that fundamentally misunderstand how risk hedging works—and then ignored the evidence that Kalshi’s proposed contracts meet even those requirements. It likewise ignored the established price-basing function of these contracts. And it followed up with unfounded and implausible speculation about election integrity, as if businesses and individuals did not *already* have significant economic exposure to electoral outcomes. Much of the CFTC’s public-interest reasoning would equally condemn *most* event contracts. Once again, that approach is fundamentally irreconcilable with the statute Congress enacted.

14. At bottom, it is undeniable that election outcomes have consequences for everyone; they play a pivotal role in determining our collective future. Allowing people to trade safely on election outcomes will give them the freedom to protect their financial interests. A legitimate market will also yield more credible and transparent election forecasting, especially relative to the bias of polling. Election markets offer transparency, clarity, and truth—equipping Americans to filter out the noise and the nonsense, and empowering them to make informed decisions and navigate uncertainties. Trustworthy election forecasts, rooted in enabling people to put their money where their mouth is, are not just valuable; they are essential. And they are most certainly lawful. Kalshi has built the protective rails to comply with U.S. law. It expects the Commission to comply too.

15. Instead, the Order is an unlawful agency power grab that corrupts and dramatically expands the Commission’s statutory mandate. In rejecting Kalshi’s event contracts, the CFTC exceeded its lawful authority and engaged in arbitrary and capricious reasoning. This Court should therefore set aside the Order under the Administrative Procedure Act (APA), and declare that Kalshi is entitled by law to list the Congressional Control Contracts on its regulated exchange.

PARTIES

16. Kalshi is a financial services company with its principal place of business in New York. Kalshi operates a federally regulated derivatives exchange that allows the public to buy and sell event contracts.

17. Defendant CFTC is a federal agency that regulates derivatives markets, including for event contracts. The CFTC is headquartered in this district.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because this case arises under the APA, 5 U.S.C. §§ 703–06.

19. Sovereign immunity poses no bar to this action. *See* 5 U.S.C. § 702.

20. Venue is proper under 28 U.S.C. § 1391(e), because the CFTC resides in this district.

FACTUAL ALLEGATIONS

A. Event Contracts Are Established Tools for Hedging Risks.

21. Many derivatives contracts are tools to mitigate risk, including risk associated with the occurrence of events. Event contracts are the purest expression of that concept. They are financial instruments that specify a future event with different potential outcomes, a payment structure for those outcomes, and a date when the contract expires. These contracts typically center on a yes-or-no question—*e.g.*, whether the Federal Reserve will cut its target federal funds rate range before a certain date, or whether 30-year mortgage rates will exceed 8% by a certain date.

22. An event contract can typically be bought or sold at a price between 1¢ and 99¢. Every transaction has a counterparty—*i.e.*, every “yes” position corresponds to a “no” position. At the contract’s expiration, it will be worth \$1 if the underlying event occurs, and \$0 if it does not. Until that date—*i.e.*, while it remains uncertain whether the underlying event will transpire—the contract’s price will fluctuate. Event contracts trade on a centralized exchange, similar to a stock market. Their prices are determined by market forces, not by the exchange. Traders can buy and sell a contract at any time before its expiration.

23. As in other markets, traders arrive at prices for event contracts based on all available information at the time. If new information arises related to the likelihood of an event, the price of a contract contingent on that event will change. As a result, the market prices of event contracts reflect real-time probabilistic beliefs about whether the underlying event will occur. For example, if a “yes” contract on a government shutdown occurrence is trading for 60¢ (and thus the corresponding “no” position is trading for 40¢), that means the market currently believes there is a 60% chance the shutdown will occur (and a 40% chance that it will not).

24. Event contracts give traders direct exposure to the outcome of real-world events with economic ramifications. No other instrument perfectly captures the risks inherent in the occurrence or non-occurrence of an event. For example, a trader can use a futures contract on the S&P 500 stock index to take a position on whether the economy will grow generally. But that contract would be a very imprecise way of addressing whether the next GDP report will identify economic growth above a certain level. Only an event contract on the next GDP announcement would do that.

25. Like other forms of derivatives, event contracts thus allow businesses and individuals to hedge against risks. For example, a beachfront property owner in a city might buy contracts predicting that a hurricane will hit that city, because the payout could offset economic losses the owner is more likely to incur if a hurricane hits. Or a firm in a regulated industry might buy contracts predicting that a very aggressive nominee will be confirmed as its lead regulator, to help mitigate the risks associated with that official’s adverse regulatory agenda.

26. Event contracts are distinct from insurance. The property owner in the example above could buy insurance to cover actual property losses, including from a hurricane. An event contract would instead hedge the diffuse *risk* of losses associated with a hurricane, including property damage, a decline in Airbnb revenues, and higher costs of food and water. Meanwhile, the regulated firm might be able to buy insurance for the cost of legal defense, but an event contract would directly hedge the manifold risks associated with a hostile regulator.

27. Beyond economic benefits to traders, event contracts also generate informational value for the public, as their prices can be understood as a collective prediction by the market. The expectations and willingness of traders to put their money on the line form the price, which reflects the market's view of the odds that an event will occur. Prediction markets therefore serve as high-powered (and highly effective) information-aggregation tools, generating crucial insights for researchers, businesses, individuals, and governments. And the resulting data about the market's perception of the event's likelihood can be used, in turn, to determine prices for assets whose value depends on the occurrence or non-occurrence of the underlying event.

B. Political Event Contracts Allow for Hedging of Political Risk and Aggregation of Useful Predictive Data.

28. Politics—no less than agriculture, weather, or inflation—is beset with uncertainty. And given the many ways in which governments influence the economy, political events can have just as profound an effect on a firm's bottom-line as spikes in energy prices or interest rates. Businesses and individuals thus have good reason to use derivatives to hedge political risks, just as they hedge other risks. And no

financial instrument is better suited to hedge risks associated with political events than contracts that reference the events themselves.

29. Indeed, Kalshi has offered event contracts based on whether certain legislation would be enacted, whether certain presidential nominees would be confirmed by the Senate, and whether the federal government would shut down—all of which are political events that carry obvious economic repercussions for a wide range of businesses and individuals.

30. Like other political events, election outcomes have vast consequences for businesses and individuals. To quote Harvard University Professor Jason Furman, the former Chairman of the Council of Economic Advisors under President Obama: “Congressional control impacts legislation, policy, and the business environment in ways that have direct economic consequence to businesses and workers. This risk is conceptually identical to climate risk, business interruption risk, and other similar risks that can and should be managed using the financial markets.”

31. Large financial institutions already design bespoke derivatives for large corporate customers to hedge against these risks. They used complex structured products to prepare for risks associated with Brexit, the 2016 election, and other world-changing political events. Event contracts on regulated exchanges like Kalshi’s offer the same opportunities to smaller enterprises and individuals.

32. Political event contracts also have other benefits. Researchers, public organizations, businesses, and governments continuously seek information about the likelihood of future political events. Among other things, that information helps to

determine prices for assets that are exposed to political risk. But traditional opinion polls and other methods of measuring public attitudes often cannot replicate the robustness, flexibility, or neutrality of market-based indicia. That is why media outlets routinely rely on political event marketplaces when reporting on political developments.

33. Indeed, political event markets are already widespread. The best known example, PredictIt, “is a futures market for politics” that allows trading on electoral outcomes. *Clarke v. CFTC*, 74 F.4th 627, 633 (5th Cir. 2023). CFTC staff have long permitted it to operate under a no-action letter; the Fifth Circuit recently enjoined the Commission’s effort to retract that authorization. *Id.* at 633–44. The University of Iowa’s IEM platform is another well-known market for political event contracts. Created before the 1988 presidential election, the IEM is a derivatives market where contract payoffs are based on real-world events, including political outcomes. The CFTC has permitted the IEM to offer political event contracts for decades too.

34. Political election markets have also existed for decades or longer in the United Kingdom, and are widespread in other democracies. Indeed, in Canada and elsewhere, one can take positions on the outcome of elections in the United States.

35. Of course, there are also unregulated, illegal markets providing similar services online and offshore. Those illicit markets lack the safeguards and oversight that traders enjoy on CFTC-regulated exchanges like Kalshi’s.

C. Congress Permits Regulated Markets To List Event Contracts, Subject to a Narrow List of Exceptions.

36. Under federal law, “[e]vent contracts” are “agreements, contracts, transactions, or swaps in excluded commodities.” 7 U.S.C. § 7a-2(c)(5)(C)(ii). While agricultural products like “wheat, cotton, rice, corn, oats,” etc., are the most familiar commodities, the CEA also defines “excluded commodities” to include interest rates, certain financial instruments, economic indices, and risk metrics. *Id.* § 1a(9), (19)(i)–(iii).

37. Relevant here, “excluded commodities” also include *events*—in the statutory parlance, any “occurrence, extent of an occurrence, or contingency” that is “beyond the control of the parties to the relevant contract” and “associated with” economic consequences. *Id.* § 1a(19)(iv). Accordingly, event contracts are defined and regulated as swaps in excluded commodities. *See id.* § 1a(47)(A)(ii), (iv), (vi).

38. An entity must seek and receive the Commission’s designation as a contract market to offer such derivatives for public trading. *Id.* §§ 2(e), 7(a); 17 C.F.R. § 38.100. The Commission has “exclusive jurisdiction” over those derivatives that are traded on regulated markets. 7 U.S.C. § 2(a)(1)(A).

39. A regulated exchange is subject to comprehensive CFTC oversight and must comply with numerous requirements governing recordkeeping, reporting, liquidity, system safeguards, conflicts of interest, disciplinary procedures, market surveillance, compliance resources, and more. *Id.* § 7(d); 17 C.F.R. pt. 38.

40. A regulated exchange may generally list an event contract without the Commission’s pre-approval by self-certifying the contract’s compliance in a filing with

the Commission, and the Commission may choose to initiate a review. *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. §§ 40.2(a), 40.11(c). Alternatively, a market may submit a new contract to the agency for advance review. 7 U.S.C. § 7a-2(c)(4)(A); 17 C.F.R. §§ 40.3(a), 40.11(c).

41. Either way, the Commission “shall approve” any event contract that it reviews *unless* it affirmatively finds that the contract violates the CEA or CFTC regulations. 7 U.S.C. § 7a-2(c)(5)(B); 17 C.F.R. § 40.3(b).

42. In 2010, Congress amended the CEA to prohibit the listing of certain event contracts “determined by the Commission to be contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(ii). But the Commission’s authority in this regard is limited. It “may determine” that an event contract is contrary to the public interest *only* if the contract “involve[s]” one of six enumerated activities: “activity that is unlawful under any Federal or State law,” “terrorism,” “assassination,” “war,” “gaming,” or “other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.” *Id.* § 7a-2(c)(5)(C)(i). The Commission cannot undertake any public-interest review *unless* the contract involves one of the enumerated activities.

43. The process for reviewing event contracts therefore proceeds in two basic steps: *First*, the Commission determines whether the contract “involves” one of the six enumerated “activit[ies].” *Id.* § 7a-2(c)(5)(C). If not, the contract may be listed—period. *Second*, if the contract *does* “involve” a listed activity, the CFTC “may determine” that it is “contrary to the public interest,” and bar its listing. *Id.*

44. For example, a contract that entitles the buyer to payment if a terrorist group carries out an attack on U.S. soil would “involve ... terrorism.” *Id.* § 7a-2(c)(5)(C)(i)(II). A contract contingent on whether the President will be assassinated would “involve ... assassination.” *Id.* § 7a-2(c)(5)(C)(i)(III). And one contingent on the progress of Russian forces against a Ukrainian target would “involve ... war.” *Id.* § 7a-2(c)(5)(C)(i)(IV). The CFTC would be empowered to review those contracts to determine whether they are “contrary to the public interest,” and to block them if it concludes that they are. *Id.* § 7a-2(c)(5)(C)(ii). Although those examples may sound far-fetched, foreign websites are currently offering contracts on, among other things, “Will a nuclear bomb explode in Ukraine in 2023?” Congress thus had good reason to provide the CFTC with a means to block these dangerous contracts.

45. The CFTC has promulgated an implementing regulation. It provides that a market “shall not list for trading” any event contract “that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law,” or “an activity that is similar to an [enumerated] activity ... that the Commission determines, by rule or regulation, to be contrary to the public interest.” 17 C.F.R. § 40.11(a)(1)–(2).

46. The Commission has not exercised its authority to determine, “by rule or regulation,” that a contract involving any activity “similar” to the five enumerated ones is “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i)(VI). As a result, the Commission may subject a contract to public-interest scrutiny *only if* “involves” illegal activity, terrorism, assassination, war, or gaming.

47. The CEA does not authorize special scrutiny of political event contracts or those relating to elections. Congress could have added “elections” or “politics” to its list of enumerated activities, but did not—despite the long history of political event markets both in the United States and around the world.

D. Kalshi Proposes To List Contracts on Congressional Control.

48. Kalshi is a regulated exchange that allows people to buy and sell event contracts. Kalshi utilizes its innovative, proprietary technology to democratize investing opportunities for everyone. The Commission unanimously authorized Kalshi to operate its regulated exchange in 2020.

49. Contracts traded on Kalshi’s market involve events that run the gamut from economics to culture, climate, public health, and transportation. For example, traders on Kalshi’s platform may buy and sell contracts based on the number of major hurricanes that will form over the Atlantic next year, or whether China’s GDP growth will exceed a certain rate.

50. Kalshi also lists contracts on political outcomes, such as whether the government will shut down, whether the debt ceiling will be lifted, or whether nominees will be confirmed. Earlier this year, Kalshi sought to offer contracts—the Congressional Control Contracts—that enable participants to take positions on which political party will control the House of Representatives or the Senate on a particular future date following the 2024 federal elections.

51. These are cash-settled, yes/no contracts based on the question: “Will <chamber of Congress> be controlled by <party> for <term>?” The contract defines control by reference to the party affiliation of the Speaker (for the House) or President

Pro Tempore (for the Senate). On settlement, those who purchased the winning side of the contract receive payment; those who purchased the side that selected the minority party receive no payment.

52. To illustrate: Imagine a green-energy start-up worried that Republicans will cut subsidy programs if they gain control of the Senate in 2025. It might hedge its risk by buying 50,000 contracts to that effect. Of course, a Republican Senate does not make it *certain* the subsidies will be phased out—but it does *increase the risk* of that loss, and the event contracts would hedge against that risk. If the Senate elects a Republican President Pro Tempore, the start-up would receive \$50,000. Its profit would be the difference between that payout and the price it paid for the contracts, which will reflect the market's perception of the likelihood of Republican control at the time of the purchase.

53. The Congressional Control Contracts' terms prohibit trading by candidates for federal or statewide public office; paid staffers on congressional campaigns; paid employees of Democratic and Republican Party organizations; paid employees of PACs and Super PACs; paid employees of major polling organizations; existing members of Congress; paid staffers of existing members of Congress; household members and immediate family members of any of the above; and any of the above listed institutions themselves.

54. On June 12, 2023, Kalshi self-certified to the Commission that its Congressional Control Contracts complied with the CEA and CFTC regulations.

55. On June 23, 2023, the Commission initiated a review of the contracts by a 3-2 vote. Announcing the review, the Commission indicated that the Congressional Control Contracts may “involve, relate to, or reference” an activity enumerated in Rule 40.11(a). In dissent, Commissioner Mersinger highlighted that the review was “fundamentally unfair” and inappropriate since the contracts did “not fall within the categories enumerated in the CEA.” Commissioner Pham dissented too, concluding that Kalshi should “be allowed to operate [its] political control markets.”

56. During a public comment period, academics, other firms in the industry, former CFTC and SEC officials, human rights activists, and nonprofits all expressed support for the Congressional Control Contracts. Many commenters attested that they would use the contracts to hedge risk. Overall, the comments explained that Congressional Control Contracts and similar instruments are not merely *legal*—and therefore *must* be approved for trading—but also carry significant societal value.

E. The CFTC Issues a Flawed Order Rejecting Kalshi’s Contracts.

57. The CFTC disagreed. On September 22, 2023, the CFTC issued an order prohibiting Kalshi from listing its Congressional Control Contracts. Three members joined the Order. One dissented. The last Commissioner abstained, citing the recent Fifth Circuit defeat in the CFTC’s litigation against PredictIt. *Clarke*, 74 F.4th 627. The Order and separate statements are attached as Exhibit A.

58. The Order begins by reciting that “the Commission may determine that contracts in certain excluded commodities ... are contrary to the public interest if the contracts involve” any of the six enumerated activities. Order at 3.

59. The Commission found that Kalshi’s Congressional Control Contracts “involve” two enumerated activities: “gaming” and “unlawful” activity. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)(I), (V). But, of course, the Commission did not and could not find that elections, or the selection of a Speaker or President Pro Tempore, *themselves* involve “gaming” or “unlawful” activity. Rather, the Commission reasoned that an event contract “involve[s]” those activities if *trading in the contract* would *amount to* “gaming” or illegal activity. *See* Order at 5–7.

60. The Commission then declared that buying or selling Kalshi’s contracts would *amount to* gaming and activity that is unlawful under state law. To reach that conclusion, the Commission relied on dictionary definitions and state statutes that broadly define illegal “gambling” to include staking money on the outcome of any “game, contest, or contingent event.” *Id.* at 8.

61. Finally, having found that the Congressional Control Contracts were subject to public-interest review, the Commission determined that those contracts were “contrary to the public interest.” *Id.* at 13–23.

62. Every step of the Order’s analysis is fatally flawed.

63. *First*, the heart of the Commission’s reasoning is its implausibly broad (and shifting) interpretation of “involve.” The Commission concluded that a contract “involves” one of the enumerated activities “if *trading in the contract amounts to* the enumerated activity.” *Id.* at 7 n.19 (emphases added). In other words, an event contract need not be contingent on the *occurrence* of an event that *involves* crime, a terrorist attack, an assassination, an act of war, or gaming. Instead, a contract is

subject to public-interest review and potential rejection if *engaging in the transaction* would *amount to* one of those activities.

64. That interpretation of “involves” fundamentally misunderstands the statutory structure. The activities enumerated in § 7a-2(c)(5)(C)(i) describe *events* that underlie a contract; if the event underlying a contract involves an enumerated activity, the CFTC may block it. The enumerated activities do not describe the act of *trading on the contract itself*.

65. That is most apparent from the fact that trading on an event contract could *never* constitute an act of terrorism, war, or assassination—for those activities, the focus *must* be on the contract’s underlying event. To justify rejection of Kalshi’s contracts, the Commission therefore had to embrace a radically different meaning of the word “involve” with respect to two (and only two) of the statute’s six enumerated activities: “gaming” and “unlawful” acts. For those activities alone, the theory goes, Congress referred to the *act of contracting*, rather than to the contract’s underlying *event*. That tortured approach—under which the same operative text toggles back and forth between two inconsistent meanings over five subparagraphs—is a sure sign that the Order misconstrues the CEA.

66. *Second*, turning to the enumerated activities, the Commission again adopted definitions that statutory context forecloses. The Commission reasoned that “gaming” means “gambling,” and that “gambling” encompasses any wager on a “game, contest, or contingent event.” *Id.* at 8. Because those who trade on Kalshi’s contracts

“stak[e] something of value” on the outcome of an election, the Commission continued, that act of trading amounts to gambling—and thus, “gaming.” *Id.* at 10.

67. But, especially in this context, “gaming” does not and cannot sweep that broadly. Rather, it refers to betting on *games*, and especially to betting on games of chance. An election is not a game at all, let alone the equivalent of bingo or roulette. It is the foundational exercise of democratic governance. Unlike games, elections have independent and meaningful political and economic consequences.

68. As a group of distinguished economics scholars (including a Nobel laureate) told the CFTC in a comment letter: “An election prediction market is no more gaming than traditional financial markets, including commodity, futures, and derivatives markets, due to the vast economic utility of the contracts.”

69. The Commission’s contrary interpretation fundamentally upends the CEA’s entire approach. After all, *every* event contract *by definition* stakes money on a contingent event. As a result, under the Commission’s reading of “involve” and “gaming,” *no event contract* would escape public-interest scrutiny. That would render the remaining enumerated activities entirely superfluous. And it would cause this one narrow exception to swallow the rule, flipping the statute’s default by authorizing CFTC public-interest review of *every* event contract.

70. Similarly, the Commission reasoned that trading in Kalshi’s contracts would be “unlawful under state law” because gambling on elections is illegal in some States. *Id.* at 11–12. The Commission’s “unlawful activity” analysis (all two sentences of it) fares no better than its approach to “gaming.”

71. Once again, the Commission jeopardizes the entire statutory structure, this time by giving States veto power over the federal regime. The CEA *preempts* state law in this area in favor of “exclusive” CFTC jurisdiction. 7 U.S.C. § 2(a)(1). But the Order’s reasoning empowers States to trump federal law and effectively *ban* trading in event contracts merely by broadly defining “gambling.” Indeed, some state laws already forbid staking money on any contingent event. *See* Order at 8 n.22. So in this respect too, the agency’s interpretation—taken seriously—would shut down the entire national market in event contracts. That is patently *not* what Congress intended by conferring on the CFTC targeted authority to prohibit contracts involving war, assassination, and the other tailored categories.

72. In her dissent, Commissioner Mersinger pointed out yet another flaw in the Commission’s analysis: It presumes that Kalshi’s contracts “are premised on the outcome of Congressional election[s].” *Id.* at 10. But Kalshi’s contracts do not turn solely on the results of any one election. They turn on the aggregate results of *all* relevant elections in that year’s cycle, *plus* the chamber’s previous composition, *plus* internal party machinations. As recent events illustrate, internal factions can prevent even a majority party from electing a Speaker. At most, congressional control is highly correlated with the outcomes of many elections—but that is equally true of many event contracts that the CFTC has never derided as “gaming.”

73. *Finally*, having decided that Kalshi’s contracts “involve” both gaming and illegal activity, the Commission deemed them “contrary to the public interest.” Here too, the Order’s analysis fails the standards for reasoned decision-making.

74. The Commission began with an “economic purpose” inquiry found in no statute, regulation, or judicial decision. *Id.* at 13. It claimed the economic effects of congressional control are too “diffuse and unpredictable” to warrant hedging or price-basing. *Id.* at 16. That logic is demonstrably flawed on at least three levels.

75. For one, certain effects of congressional control are *not* diffuse. Think of a consulting firm with deep ties to one party. Congressional control by the other party would directly harm its business. The Congressional Control Contracts would allow it to hedge against that risk, and it would allow others to more accurately determine the economic value of that firm. The public comments are full of real examples of assets and markets where a direct link to electoral outcomes has been demonstrated.

76. For another, it is simply wrong to say that “diffuse” risks do not justify hedging or permit price-basing. The purpose of hedging is to mitigate *risks*, not (like insurance) to offset precise losses. That is why award-winning economists submitted comments explaining the hedging value of election contracts; it is why a managing director at a leading investment bank commented that he regularly assists clients with hedging election risk; and it is why a host of commenters from a wide range of industries (from cannabis to green energy) affirmatively stated they would use Kalshi’s contracts to hedge risk. For all of the same reasons, the market’s ability to aggregate information about the likelihood of election results would allow that data to play a role in determining prices for assets that face particular political risks (*e.g.*, oil companies or cryptocurrency firms). The Commission rejected all this evidence without explanation, resting on its own say-so in the face of concrete contrary proof.

77. For a third, financial products (including event contracts) are often used to hedge “diffuse” risks. Consider futures based on a price volatility index (VIX), which measures expected market volatility using S&P 500 options contracts. It is hard to imagine anything more “diffuse.” But volatility is associated with economic risks, which is why derivatives are offered and traded based on it (including on the Chicago Mercantile Exchange, a large and well-established derivatives exchange).

78. In short, even if “economic purpose” were a legally appropriate inquiry, it was irrational for the Commission to subject election event contracts to a uniquely higher showing of economic purpose than other event contracts.

79. The CFTC next accused Kalshi of undermining American democracy. Parroting six Senators who submitted comments, the Commission intoned that the contracts threaten to “profoundly undermine the sanctity and democratic value of elections.” *Id.* at 19. Why? Because someone might vote for a candidate he despises in a Quixotic bid to swing settlement of a contract on control of Congress. *Id.* at 20. That is unsubstantiated: The CFTC can point to no example of such behavior despite the prevalence of prediction markets both in the United States and abroad. It is also implausible: Why would anyone buy a contract favoring a party they *oppose* and then bootstrap that purchase to change their voting intentions?

80. Worse yet, the Commission warned, malicious actors might “spread misinformation” to “manipulate the market in the Congressional Control Contracts.” *Id.* True, in an environment with “unregulated” “informational sources”—*i.e.*, a free society—lies are unavoidable. But that is already true; there are already enormous

incentives to engage in political dirty tricks. The Commission’s ploy to link Kalshi’s contracts to the bogeyman of “misinformation” is feeble—consisting of a single blog post expressing “worri[es]” about fake polling companies. *See id.* at 22 n.39.

81. The Commission’s supposed fears about election integrity also ignore the reality that businesses and individuals *already* face economic risks associated with elections. Political spending on the 2020 federal elections reportedly exceeded \$14 billion. Elections matter; individuals and businesses already act accordingly. Allowing event contracts based on electoral outcomes would not increase the risks of manipulation; if anything, it would decrease them by allowing the risks associated with elections to be hedged. And the existence of a neutral, market-driven measure of public opinion would likewise reduce the threat of fake polls and disinformation. Contract markets create a financial incentive to separate the wheat from the chaff in political discourse, and limit the salience of any particular piece of “fake news.”

82. Venturing even deeper into the realm of speculation, the Commission offered a final reason to ban Kalshi’s contracts: the prospect of playing “election cop.” *Id.* at 23. The Commission fretted that approving these contracts might one day force it to “investigat[e] election-related activities—potentially including the outcome of an election itself.” *Id.* at 22. Once again, the Commission’s rationale proves too much. The CFTC already regulates countless derivatives markets involving commodities over which the agency lacks independent expertise or authority. For example, the CFTC oversees trading in futures contracts on the S&P 500. Yet the Commission does not regulate *stocks*; that is the job of the Securities and Exchange Commission,

which the CFTC relies on to prevent manipulation of the underlying market. Likewise, it is the role of the Federal Election Commission and numerous state and federal regulators to supervise the integrity of elections. They already take that responsibility incredibly seriously, as they should. Event contracts based on political outcomes would not somehow change that, or thrust this role onto the CFTC.

CLAIMS

Violation of APA

83. Kalshi realleges all prior paragraphs.

84. The APA provides that the Court “shall ... hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

85. The CFTC is an “agency” under the APA, *id.* § 551(1), and the Order is a final, reviewable “agency action for which there is no other adequate remedy in a court,” *id.* § 704. The Order represents the consummation of the CFTC’s decision-making process with respect to Kalshi’s Congressional Control Contracts.

86. Kalshi has been adversely affected or aggrieved by the CFTC’s Order and therefore can sue under the APA. *Id.* § 702.

87. The Order exceeds the Commission’s statutory authority, is contrary to law, and is arbitrary and capricious.

88. The Order fundamentally misconstrues every relevant statutory term. To start, it misconstrues § 7a-2(c)(5)(C)(i) to authorize public-interest review anytime *trading in* the contract would *amount to* an enumerated activity. But the only reading

of the provision that makes sense as applied to all the listed activities is that an event contract “involves” illegal activity, terrorism, assassination, war, or gaming only if its settlement is contingent on the *occurrence* of such an event. The events underlying the Congressional Control Contracts do not “involve” any of those activities.

89. The Order compounds its error by distorting the two enumerated categories that it invokes. *First*, it converts the “gaming” category from a narrow but important limit on using derivatives markets to bet on *games* into an all-purpose tool for banning any event contract. *Second*, the Order construes the “unlawful activity” category in a way that empowers state legislatures to dictate the legality of event contracts, even though the CEA preempts state laws insofar as they interfere with the Commission’s exclusive jurisdiction over derivatives markets.

90. The Commission’s misreadings of the CEA arrogate authority found nowhere in the statute, enabling the agency to review and reject a potentially vast array of event contracts—indeed, potentially *all* of them. Any interpretation that gives the Commission *carte blanche* to reject any event contracts it wishes cannot seriously be defended as consistent with the CEA’s text, purpose, or structure.

91. The Order again employs faulty and overreaching reasoning to deem Kalshi’s contracts “contrary to the public interest.” Here, too, the Order concocts a test that has no basis in the statute and proceeds to misapply it. Ignoring the record evidence of private and public benefits associated with political event contracts, the Order traffics in rank speculation about their supposed harms. It offers rationales that are untethered to the statutory purpose and would prove far too much.

92. The CEA entitles Kalshi to list its Congressional Control Contracts for trading on its market. The contracts do not “involve” any of the activities enumerated in § 7a-2(c)(5)(C)(i), and are therefore not subject to public-interest review. And in any event, Kalshi’s contracts are not “contrary to the public interest.”

93. Accordingly, the Court should vacate the Order.

PRAYER FOR RELIEF

Now, therefore, Kalshi requests a judgment in its favor as follows:

1. Vacating the Order;
2. Declaring that Kalshi’s Congressional Control Contracts can be listed;
3. Awarding reasonable attorneys’ fees and costs, plus interest accruing thereon, under 28 U.S.C. § 2412; and
4. Granting such other relief as the Court may deem appropriate.

Dated: November 1, 2023

Respectfully submitted,

Amanda K. Rice (D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue, Suite 2100
Detroit, MI 48226
(313) 733-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

**pro hac vice forthcoming*

/s/ Jacob (Yaakov) M. Roth
Jacob (Yaakov) M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar
90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

*Counsel for Plaintiff
KalshiEx LLC*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

No. 23-cv-03257-JMC

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

MOTION FOR SUMMARY JUDGMENT

Plaintiff KalshiEx LLC moves this Court to enter Summary Judgment in its favor under Federal Rule of Civil Procedure 56 and Local Rule 7. There is no genuine issue as to any material fact as set forth in the administrative record, and Plaintiff is entitled to judgment as a matter of law. Plaintiff's motion is supported by the Memorandum of Law in Support of the Motion for Summary Judgement.

Dated: January 25, 2024

Respectfully submitted,

Amanda K. Rice
(D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue,
Suite 2100
Detroit, MI 48226
(313) 733-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

/s/ Jacob (Yaakov) M. Roth
Jacob (Yaakov) M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar
90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

*Counsel for Plaintiff
KalshiEx LLC*

*admitted *pro hac vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

No. 23-cv-03257-JMC

Memorandum in Support of
Motion for Summary Judgment

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Jacob (Yaakov) M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar 90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

Amanda K. Rice (D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue, Suite 2100
Detroit, MI 48226
(313) 733-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

*admitted *pro hac vice*

*Counsel for Plaintiff
KalshiEx LLC*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	3
A. Event Contracts Are Established Tools for Hedging Risks and Aggregating Information.....	3
B. Political Event Contracts Allow for Hedging of Political Risk and Collection of Valuable Predictive Data.	6
C. Congress Allows Regulated Exchanges To List Event Contracts, Subject to a Narrow List of Exceptions.	7
D. Kalshi Proposes To List the Congressional Control Contracts.....	9
E. The CFTC Issues an Order Rejecting Kalshi’s Contracts.....	11
LEGAL STANDARD.....	13
ARGUMENT	13
I. THE ORDER IS PREMISED ON A LEGAL ERROR AS TO WHEN EVENT CONTRACTS “INVOLVE” AN ENUMERATED ACTIVITY.	14
A. The Commission’s Shifting Interpretation of “Involve” Is Wrong.....	15
B. The Order’s Attacks on the Event-Based Reading Are Meritless.	21
II. THE ORDER ALSO MISCONSTRUES THE “GAMING” AND “UNLAWFUL ACTIVITY” CATEGORIES.....	23
A. Trading Congressional Control Contracts Does Not Amount to “Gaming.”.....	24
B. Trading Congressional Control Contracts Is Also Not “Unlawful” Activity.....	31
III. THE ORDER’S PUBLIC-INTEREST FINDING IS ARBITRARY AND CAPRICIOUS.	34
A. The CFTC Imposed and Misapplied an Arbitrarily Heightened “Direct Effects” Standard for Evaluating Economic Utility.	35
B. The CFTC Ignored the Evidence of Non-Economic Benefits.	40

TABLE OF CONTENTS

(continued)

	Page
C. The CFTC Rested on Implausible, Unsubstantiated Speculation About Election Integrity.	41
CONCLUSION.....	45

TABLE OF AUTHORITIES

	Page
CASES	
<i>Am. Agric. Movement, Inc. v. Bd. of Trade</i> , 977 F.2d 1147 (7th Cir. 1992)	20
<i>Bankamerica Corp. v. United States</i> , 462 U.S. 122 (1983)	18
<i>Bd. of Trade v. Christie Grain & Stock Co.</i> , 198 U.S. 236 (1905)	28
<i>Bibbo v. Dean Witter Reynolds, Inc.</i> , 151 F.3d 559 (6th Cir. 1998)	20
<i>Blackmon-Malloy v. U.S. Capitol Police Bd.</i> , 575 F.3d 699 (D.C. Cir. 2009)	18
<i>Boim v. Quranic Literacy Inst.</i> , 291 F.3d 1000 (7th Cir. 2002)	15
<i>Brown v. Gardner</i> , 513 U.S. 115 (1994)	17
<i>Brown v. NHTSA</i> , 673 F.2d 544 (D.C. Cir. 1982)	17
<i>*Carlson v. Postal Regul. Comm’n</i> , 938 F.3d 337 (D.C. Cir. 2019)	40, 41
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005)	18
<i>Clarke v. CFTC</i> , 74 F.4th 627 (5th Cir. 2023).....	7, 11
<i>Comm’r v. Clark</i> , 489 U.S. 726 (1989)	19

Davis v. Mich. Dep’t of Treasury,
489 U.S. 803 (1989) 18

Del. Dep’t of Nat. Res. & Env’t Control v. EPA,
785 F.3d 1 (D.C. Cir. 2015) 39

Dole v. United Steelworkers of Am.,
494 U.S. 26 (1990) 29

Horsehead Res. Dev. Co. v. Browner,
16 F.3d 1246 (D.C. Cir. 1994) 43

James Madison Ltd. ex rel. Hecht v. Ludwig,
82 F.3d 1085 (D.C. Cir. 1996) 19

Jones v. Hendrix,
599 U.S. 465 (2023) 18

Leist v. Simplot,
638 F.2d 283 (2d Cir. 1980)..... 20, 31

Ludlow v. Mabus,
793 F. Supp. 2d 352 (D.D.C. 2011) 13

**Miss. Band of Choctaw Indians v. Holyfield*,
490 U.S. 30 (1989) 20, 33

Mohamad v. Palestinian Auth.,
566 U.S. 449 (2012) 17

Mohasco Corp. v. Silver,
447 U.S. 807 (1980) 17

**Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*,
463 U.S. 29 (1983) 34

Nat’l Lifeline Ass’n v. FCC,
921 F.3d 1102 (D.C. Cir. 2019)..... 34

Nat’l Tel. Co-op. Ass’n v. FCC,
563 F.3d 536 (D.C. Cir. 2009) 13

NexPoint Diversified Real Est. Tr. v. Acis Cap. Mgmt., L.P.,
80 F.4th 413 (2d Cir. 2023) 15

Petit v. U.S. Dep’t of Educ.,
675 F.3d 769 (D.C. Cir. 2012) 13

Powerex Corp. v. Reliant Energy Servs., Inc.,
551 U.S. 224 (2007) 17

**Ratzlaf v. United States*,
510 U.S. 135 (1994) 17, 18

**Reno v. Bossier Par. Sch. Bd.*,
528 U.S. 320 (2000) 17, 18

Sierra Club v. Salazar,
177 F. Supp. 3d 512 (D.D.C. 2016) 39

Sullivan v. Stroop,
496 U.S. 478 (1990) 17

**United States ex rel. Polansky v. Exec. Health Res., Inc.*,
599 U.S. 419 (2023) 19, 28

United States v. Slatten,
865 F.3d 767 (D.C. Cir. 2017) 19

Whitman v. Am. Trucking Ass’ns,
531 U.S. 457 (2001) 28

Yates v. United States,
574 U.S. 528 (2015) 29

Ysleta Del Sur Pueblo v. Texas,
596 U.S. 685 (2022) 20

STATUTES

5 U.S.C. § 706..... 13

7 U.S.C.

 § 1a..... 7, 19, 33

 § 2..... 8, 20, 21, 31, 33

 § 5..... 35

 § 7a-2.....1, 7, 8, 9, 10, 12, 14, 16, 19

 § 25..... 21

25 U.S.C. § 2703..... 25

31 U.S.C.

 § 5361..... 25

 § 5362..... 25, 29

 § 5363..... 25

 § 5364..... 25

 § 5365..... 25

 § 5366..... 25

 § 5367..... 25

4 Pa. Stat. & Cons. Stat. Ann..... 26

18 Pa. Stat. & Cons. Stat. Ann..... 26

Ala. Code § 13A-12-20..... 29, 31, 32

Alaska Stat. Ann. § 11.66.280..... 29, 31, 32

Ariz. Rev. Stat.

 § 13-3301..... 31, 32

 § 16-1015..... 30

Ark. Code. Ann. § 5-66-104..... 25

Cal. Bus. & Prof. Code § 19805..... 25

Colo. Rev. Stat. Ann.

 § 18-10-102..... 31, 32

 § 44-30-103..... 25

Conn. Gen. Stat. § 12-557b..... 25

Del. Code Ann. Title 11 § 1403..... 29

Fed. R. Civ. P. § 56 12

Fla. Stat.

 § 849.01 25

 § 849.08 25

 § 849.14 29

Ga. Code Ann. § 16-12-21 30

Haw. Rev. Stat. § 712-1220 29, 31, 32

Idaho Code § 18-3801..... 31, 32

Ind. Code § 35-45-5-1 31

Iowa Code § 725.7 25

Kan. Stat. Ann.

 § 21-6403..... 31

Ky. Rev. Stat.

 § 238.505 25

 § 528.010 29

La. Stat.

 § 14:90 29

 § 27:205 25

Mass. Gen. Laws Chapter 23K § 2..... 25

Md. Code Ann., Crim. Law § 12-101 26

Me. Rev. Stat. Title 17-A § 952 29, 32

Mich. Comp. Laws

 § 168.931 30

 § 750.301 32

Minn. Stat. § 609.75..... 31

Miss. Code. Ann.
 § 75-76-5..... 26
 § 97-33-1..... 32

Mo. Rev. Stat.
 § 313.800 26
 § 572.010 29, 31, 32

N.C. Gen. Stat. § 14-292 26

N.H. Rev. Stat. Ann. § 647:2 32

N.J. Stat.
 § 2C:37-1 32
 § 5:12-22..... 26
 § 19:34-24..... 30

N.M. Stat. Ann.
 § 30-19-1..... 31
 § 60-2E-3..... 26

N.Y. Penal Law § 225.00 29, 33

N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1301 26

Neb. Rev. Stat. § 28-1101 30

Nev. Rev. Stat. §§ 463.0152..... 26

Ohio Rev. Code Ann. § 2915.01 26, 31

Okla. Stat. Ann. Title 21 § 981..... 31

Or. Rev. Stat.
 § 167.117..... 31, 32
 § 260.635..... 30

R.I. Gen. Laws § 41-9-1 26

S.C. Code Ann. § 3-11-100 26

S.D. Codified Laws § 22-25-1..... 26

Tenn. Code Ann. § 39-17-501 31

Tex. Penal Code Ann. § 47.02..... 30

Utah Code Ann. § 76-10-1101 29, 31

Va. Code Ann.
 § 18.2-325..... 32
 § 58.1-4100..... 26

Vt. Stat. Ann. Title 13 § 2141..... 26

Wash. Rev. Code § 9.46.0237..... 29, 31, 32

Wis. Stat. Ann. § 945.01 31

Wyo. Stat. Ann. § 6-7-101 31, 32

OTHER SOURCES

Game, Merriam-Webster’s Collegiate Dictionary (11th ed. 2020) 27

Game, New Oxford American Dictionary (3d ed. 2010)..... 24

Gaming, American Heritage Dictionary (4th ed. 2009)..... 24

Gaming, Bouvier Law Dictionary (2011 ed.) 24

Gaming, Cambridge Dictionary of American English (2d ed. 2008) 24

Gaming, Concise Oxford English Dictionary (11th ed., rev. 2008)..... 24

Gaming Contract, Chambers Dictionary (13th ed. 2014)..... 24

Involve, American Heritage Dictionary 921 (4th ed. 2009) 15

Steven Nickolas, *How Can Derivatives Be Used for Risk Management?*,
 Investopedia (Sept. 29, 2022)..... 15

INTRODUCTION

Plaintiff KalshiEx LLC (Kalshi) operates a regulated exchange that allows the purchase and sale of event contracts. Event contracts entitle purchasers to payment based on whether particular events occur. Similar to futures and other derivatives, these instruments are tools to hedge risks; they also harness the “wisdom of crowds” to generate reliable predictive data. Under the Commodity Exchange Act (CEA), event contracts are presumptively permissible for trading on regulated exchanges. The Commodity Futures Trading Commission (CFTC or Commission) may prohibit an event contract only if it (1) “involve[s]” unlawful activity, terrorism, assassination, war, gaming, or a “similar activity” specified by regulation, *and* (2) is determined by the CFTC to be “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i).

In June 2023, Kalshi sought to list event contracts on whether a particular party will control the House of Representatives or the Senate on a particular date (Congressional Control Contracts). Because those contracts do not “involve” unlawful activity, terrorism, assassination, war, gaming, or any similar activity that the CFTC has specified by regulation, the Commission had no power to prohibit them. Nor are they contrary to the public interest in any event. Quite the opposite. Uncertainty surrounding political events poses economic risks—no less than uncertainty over oil supply, hurricanes, or pandemics. As hundreds of academics, business owners, and former CFTC officials thus explained in formal comments, the Congressional Control Contracts would enable hedging against economic risks associated with partisan control of Congress while generating valuable predictive data.

Nevertheless, the CFTC prohibited Kalshi from listing its contracts. Its Order contorts and misapplies the CEA’s text, ignores its structure and purpose, allows a narrow exception to swallow the rule, and engages in faulty, unsupported reasoning. It is unlawful and must be vacated for three independent reasons.

First, in concluding that Kalshi’s contracts “involve” enumerated activities, the Commission misunderstood the meaning of that word in this statutory framework. An event contract “involves” an enumerated activity if its *underlying event* is or closely relates to that activity. For example, a contract contingent on a terrorist attack on American soil would “involve” terrorism. That intuitive interpretation of “involve” makes sense of every enumerated activity—and plainly does not reach the contracts here. The CFTC instead claimed it can ban an event contract if *trading* on the contract would *amount to* “gaming” or “unlawful activity.” But that construction violates basic interpretive principles: It attributes disparate meanings to a single statutory term. It renders the other listed activities superfluous. It upends exclusive federal jurisdiction over regulated exchanges. And it ultimately flips the statute’s default rule by subjecting *all* event contracts to public-interest scrutiny.

Second, even if the Commission were empowered to ban event-contract trading that would amount to “gaming” or “unlawful activity,” trading on the contracts here would not. Elections are not games, so trading contracts on them is not “gaming.” Nor does the “unlawful activity” category empower States to ban event contracts through their gambling statutes. Again, the Commission’s broader interpretations of these terms would swallow both the rule and the other enumerated exceptions.

Finally, even if the Congressional Control Contracts were properly subject to public-interest scrutiny, the CFTC’s analysis was arbitrary and capricious. The Commission dismissed comments from renowned economists, investors, and business owners, all of whom confirmed the concrete, real-world hedging benefits of Kalshi’s contracts. It instead improvised heightened requirements that misunderstand how risk hedging works—and ignored the evidence that Kalshi’s contracts meet even that test. On the other side of the ledger, the Commission merely offered unfounded and implausible speculation about election integrity, as if the Congressional Control Contracts *create* economic exposure to electoral outcomes rather than *reflect* it.

In short, the CFTC’s decision to prohibit Kalshi’s contracts contradicts both the statute and the record. This Court should vacate the challenged Order.

BACKGROUND

A. Event Contracts Are Established Tools for Hedging Risks and Aggregating Information.

Derivatives are tools to mitigate risk. *See* Administrative Record (AR) at 37, 101; *see also* Steven Nickolas, *How Can Derivatives Be Used for Risk Management?*, Investopedia (Sept. 29, 2022). Event contracts—which are a form of derivative—fit that mold. *See* AR 37–40, 101. They are financial instruments that specify a future event with different potential outcomes, a payment structure for those outcomes, and a date when the contract expires. *See* AR 27–28, 3163. These contracts typically center on a yes-or-no question—*e.g.*, whether 30-year mortgage rates will exceed 8% at the end of the year, or whether average temperatures in California will hit an all-time high by the end of the summer.

The buyer of an event contract takes a “yes” position on whether its underlying event will occur. For every such purchase, a counterparty (or seller) implicitly takes a “no” position. AR 28. An event contract can typically be bought or sold at a price between 1¢ and 99¢. AR 27. At the contract’s expiration, the seller must pay the buyer \$1 if the underlying event occurs, and \$0 if not. AR 28, 33. Contracts can be bought or sold at any time before their expiration. AR 33. Until that date—*i.e.*, while it remains uncertain whether the event will occur—the contract price will fluctuate. See AR 28. Event contract prices, like stock prices, are determined by market forces, not set by the exchange on which the contracts or stocks are traded. See AR 58, 1398. Traders arrive at those prices based on all available information at the time of the transaction. See AR 27–28, 1479. As a result, the prices of event contracts reflect the market’s real-time probabilistic belief about whether the underlying event will occur. AR 1398, 1479.

Event contracts give traders direct exposure to the economic ramifications of real-world events. AR 1478. Although traders can (and do) use many other financial instruments to capture related economic forces, few can do so as precisely as an event contract. For example, a trader can purchase a futures contract on the S&P 500 stock index to take a position on whether the national economy will grow, as movement in that index tends to correlate with movement in GDP. But that would be an imprecise way to address whether the next GDP report will actually show economic growth. An event contract on the next GDP announcement can provide that targeted exposure.

Businesses and individuals use event contracts—like other derivatives—to hedge against the risk of an event happening. *E.g.*, AR 1528. For example, a beachfront property owner might buy contracts predicting that a hurricane will make landfall nearby, because the payout from those contracts could offset economic losses the owner is likely to incur if a storm hits. Such an event contract is distinct from—and serves a different function than—an insurance policy. The property owner could buy insurance to cover damage actually incurred from a storm. But unlike an event contract, that policy would not hedge the risk of other losses associated with a hurricane hitting, such as lost rental revenues or higher costs of food and water. Of course, not everyone who trades an event contract is hedging risk—some simply seek a return. That is true of all derivative markets; indeed, a robust market depends in part on the liquidity provided by speculators. *See, e.g.*, AR 1310, 2748.

Beyond their hedging benefits to businesses and individuals, event contracts also generate informational value for the public. AR 1392–93, 1550–52, 2991–93. As explained, traders’ expectations determine the contract price, which reflects the market’s collective view of the odds that an event will occur. Prediction markets thus serve as high-powered and highly effective information-aggregation tools, generating insights for researchers, businesses, individuals, and governments. *See, e.g.*, AR 1444, 1528, 1550. The resulting data about the market’s perception of the event’s likelihood can be used, in turn, to determine prices for assets whose value depends on the occurrence of the event; this is known as “price-basing.” AR 1550, 3006–08.

B. Political Event Contracts Allow for Hedging of Political Risk and Collection of Valuable Predictive Data.

Politics—no less than economic trends or weather—is beset with uncertainty.

AR 1550, 2990. And political events—no less than recessions or droughts—can have vast economic consequences. AR 2990–93. To quote Harvard Professor Jason Furman, former Chairman of President Obama’s Council of Economic Advisors: “Congressional control impacts legislation, policy, and the business environment in ways that have direct economic consequence to businesses and workers. This risk is conceptually identical to climate risk, business interruption risk, and other similar risks that can and should be managed using the financial markets.” AR 1551.

Large financial institutions design bespoke derivatives for corporate customers and wealthy individuals to hedge against risks associated with political events. *See, e.g.*, AR 3367. For example, they used complex structured products to prepare for Brexit, the 2016 election, and other world-changing political events. AR 1404, 1422, 1598. But many individuals and businesses lack access to these specialized instruments. Political event contracts help level the playing field.

They also have other benefits. Better information about the likelihood of political events helps individuals to structure their lives, businesses to manage their affairs, and officials to make policy. AR 1549. It also helps to determine prices for assets exposed to political risk. AR 3367. But traditional polls and other methods of measuring public attitudes often cannot replicate the real-time responsiveness or neutrality of market data. AR 1452–53, 1556. That is why media outlets routinely rely on event markets when reporting on political developments. AR 1495.

For all of these reasons, markets for political event contracts are widespread. PredictIt, for example, “is a futures market for politics” that allows trading on electoral outcomes. *Clarke v. CFTC*, 74 F.4th 627, 633 (5th Cir. 2023). CFTC staff have long permitted it to operate under a no-action letter (although there is now active litigation arising from the Commission’s recent efforts to rescind it). *See id.* at 633–44. The University of Iowa’s IEM platform is another well-known market for political event contracts, one the CFTC has likewise permitted for decades. AR 73, 1509, 3008. Similar markets exist (and have long existed) in other countries around the world. *See, e.g.*, AR 1416. And unregulated, illegal markets—which lack the safeguards of regulated exchanges like Kalshi’s—provide analogous services online and offshore. *See, e.g.*, AR 1752, 1822.

C. Congress Allows Regulated Exchanges To List Event Contracts, Subject to a Narrow List of Exceptions.

Under federal law, “[e]vent contracts” are regulated as “agreements, contracts, transactions, or swaps in excluded commodities.” 7 U.S.C. § 7a-2(c)(5)(C)(i). While agricultural products like “wheat, cotton, rice, corn, [and] oats” are the most familiar commodities, the CEA defines “excluded commodities” to include non-tangible items like interest rates, certain financial instruments, economic indices, and risk metrics. *Id.* § 1a(9), (19)(i)–(iii). Relevant here, “excluded commodities” also include *events*—in the statutory parlance, any “occurrence, extent of an occurrence, or contingency” that is “beyond the control of the parties to the relevant contract” and “associated with” economic consequences. *Id.* § 1a(19)(iv).

An entity must seek and receive CFTC designation as a regulated exchange to offer event contracts or other derivatives broadly for public trading. *Id.* §§ 2(e), 7(a); 17 C.F.R. § 38.100. The CFTC has “exclusive jurisdiction” over derivatives traded on regulated exchanges. 7 U.S.C. § 2(a)(1)(A). Exchanges are subject to comprehensive oversight and must comply with requirements governing recordkeeping, reporting, liquidity, system safeguards, conflicts of interest, disciplinary procedures, market surveillance, compliance resources, and more. *Id.* § 7(d); 17 C.F.R. pt. 38.

While event contracts are presumptively lawful, *see* 7 U.S.C. § 7a-2(c)(5)(B), Congress in 2010 amended the CEA to prohibit event contracts if they (i) fall within certain narrow categories and (ii) are “determined by the Commission to be contrary to the public interest,” *id.* § 7a-2(c)(5)(C)(i)–(ii). The Commission may undertake a public-interest review *only* if the contract “involve[s]”: “activity that is unlawful under any Federal or State law,” “terrorism,” “assassination,” “war,” “gaming,” or “other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.” *Id.* § 7a-2(c)(5)(C)(i). Unless the contract involves one of those activities, the CFTC has no public-interest determination to make.

Consistent with the CEA’s text, then, the process for reviewing event contracts proceeds in two basic steps: *First*, the CFTC must determine whether the contract “involve[s]” one of the enumerated “activit[ies].” *Id.* § 7a-2(c)(5)(C)(i). If not, the Commission must allow the contract to be listed without further scrutiny. *Second*, if the contract does “involve” a listed activity, the CFTC “may determine” that it is “contrary to the public interest” and, if so, bar its listing. *Id.*

The Commission has promulgated an implementing regulation that largely mirrors the statute: An exchange “shall not list for trading” any event contract “that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law,” or “an activity that is similar to an [enumerated] activity ... that the Commission determines, by rule or regulation, to be contrary to the public interest.” 17 C.F.R. § 40.11(a)(1)–(2). But the CFTC has not exercised its authority to determine, “by rule or regulation,” that a contract involving any activity “similar” to the five enumerated ones is “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i)(VI). As a result, public-interest scrutiny applies only if a contract “involves” unlawful activity, terrorism, assassination, war, or gaming.

D. Kalshi Proposes To List the Congressional Control Contracts.

Kalshi is a regulated exchange that allows the public to buy and sell event contracts. Kalshi seeks to democratize investing opportunities once restricted to large corporations and the super-rich. The CFTC unanimously authorized Kalshi to operate its exchange in 2020. *See* AR 1314. Contracts traded on Kalshi’s exchange involve events that run the gamut from economics to climate, public health, and transportation—*e.g.*, the number of major hurricanes that will form over the Atlantic next year, or whether China’s GDP growth will exceed a certain rate. AR 1314, 1394, 1405. Kalshi also lists contracts that involve political events, *e.g.*, whether the federal government will shut down, whether the debt ceiling will be lifted by a deadline, and whether particular nominees will be confirmed by the Senate. *See Events*, Kalshi, <https://kalshi.com/events>.

This case involves Congressional Control Contracts, which enable buyers to take positions on which political party will control the House of Representatives or the Senate on a particular future date. AR 26, 32. These are cash-settled, yes/no contracts based on the question: “Will <chamber of Congress> be controlled by <party> for <term>?” The contract defines control by reference to the party affiliation of the Speaker (for the House) or President Pro Tempore (for the Senate). AR 27. To avoid potential conflicts of interest, the contracts’ terms prohibit certain individuals and institutions from purchasing them (including candidates for office; paid employees of Members of Congress, congressional campaigns, party organizations, PACs, Super PACs, or major polling organizations; existing Members of Congress; and household and immediate family members of the above). AR 35.

On June 12, 2023, Kalshi certified to the CFTC that the Congressional Control Contracts comply with applicable law. AR 26. That certification enables a regulated exchange to list a contract for trading. 7 U.S.C. § 7a-2(c)(1). But a split Commission chose to initiate a review of the contracts and thereby suspend the listing of the contracts. *See id.* § 7a-2(c)(2). In announcing its review, the CFTC indicated that the Congressional Control Contracts may involve an enumerated activity. AR 148. Two Commissioners dissented, with one expressly observing that the contracts did “not fall within the categories enumerated in the CEA.” Mersinger Dissenting Statement, CFTC.gov (June 23, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement062323>; Pham Dissenting Statement, CFTC.gov (June 23, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062323>.

During the ensuing public comment period, academics, businesses, investors, former CFTC and SEC officials, human-rights activists, and nonprofits all expressed support for the Congressional Control Contracts.¹ Most commenters attested to the economic and informational value of political event contracts generally and the Congressional Control Contracts specifically.² And many attested that they would actually buy Congressional Control Contracts to hedge risk.³ Overall, the comments reinforced that Congressional Control Contracts are not merely legal—and therefore must be approved for trading—but also have significant societal value.

E. The CFTC Issues an Order Rejecting Kalshi’s Contracts.

On September 22, 2023, the CFTC issued an order (the Order) prohibiting Kalshi from listing its Congressional Control Contracts. AR 1–23 (Order). Commissioner Mersinger again dissented. Mersinger Dissenting Statement, CFTC.gov (Sept. 22, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092223>. Commissioner Pham abstained, citing the CFTC’s recent defeat in its litigation against PredictIt. *See Clarke*, 74 F.4th 627; *see also* Pham Abstention Statement, CFTC.gov (Sept. 22, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement092223>.

¹ *See, e.g.*, AR 1312–23, 1378–79, 1380–82, 1388–90, 1392–1403, 1404–05, 1443–45, 1448–53, 1474–75, 1477–81, 1527–29, 1537–38, 1541–45, 1549–52, 1555–57, 1558–60, 1573–78, 1584–85, 1602, 1616–23, 1744, 1745–46.

² *See, e.g.*, AR 1413–41, 1474–75, 1477–81; 1527–29, 2277–345.

³ *See, e.g.*, AR 1348, 1375–76, 1386–87, 1391, 1532, 1533, 1539–40, 1590–91, 1597, 1613, 3367.

In the Order, the Commission correctly observed that it “may determine that contracts in certain excluded commodities ... are contrary to the public interest if the contracts involve” any of the enumerated activities. Order at 3. But it then went on incorrectly to find that Kalshi’s Congressional Control Contracts are subject to public-interest review because they “involve” two enumerated activities: “gaming” and “unlawful” activity. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)(I), (V).

In so finding, the Commission did not (and could not) determine that elections are themselves “gaming” or unlawful activity. Rather, the Commission reasoned that a contract “involve[s]” those enumerated activities if *trading on the contract* would amount to “gaming” or unlawful activity. *See* Order at 5–7. The Commission then declared that trading these contracts would amount to gaming and unlawful activity, relying on dictionary definitions and state statutes that broadly define “gambling” to include staking money on the outcome of any “game, contest, or contingent event.” *Id.* at 8. Finally, having found that the Congressional Control Contracts were subject to public-interest review, the Commission determined that they were “contrary to the public interest” because they supposedly had no legitimate economic purpose and would threaten election integrity. *Id.* at 13–23.

Kalshi then filed this lawsuit under the Administrative Procedure Act (APA), asking this Court to vacate the Order because it “exceeds the Commission’s statutory authority, is contrary to law, and is arbitrary and capricious.” Compl. ¶¶ 83–93, ECF 1 (Nov. 1, 2023). Kalshi now moves this Court to grant summary judgment in its favor. Fed. R. Civ. P. 56.

LEGAL STANDARD

Summary judgment based on the administrative record is the “appropriate mechanism to resolve an APA challenge to agency action.” *Ludlow v. Mabus*, 793 F. Supp. 2d 352, 354 n.1 (D.D.C. 2011). A court must “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “in excess of statutory ... authority.” 5 U.S.C. § 706(2)(A), (C). In so doing, the court must “interpret ... statutory provisions” for itself and “decide all relevant questions of law.” *Id.* § 706. “The APA’s arbitrary-and-capricious standard requires that agency [actions] be reasonable and reasonably explained.” *Nat’l Tel. Co-op. Ass’n v. FCC*, 563 F.3d 536, 540 (D.C. Cir. 2009).

ARGUMENT

This Court should vacate the Commission’s Order and declare that Kalshi may list its Congressional Control Contracts for trading. The CEA requires the CFTC to first assess whether an event contract falls into one of the discrete categories listed in the statute; if it does not, no public-interest review applies. Kalshi’s contracts are not subject to public-interest review because they do not “involve” any of the enumerated activities. Those activities describe *events* that could *underlie* a contract, not the act of *trading on the contract itself*. And since partisan control of Congress does not “involve” terrorism, assassination, war, gaming, or unlawful activity, Kalshi is entitled to list its contracts—period. The statute is unambiguous on these points once traditional tools of statutory construction are applied, as they must be. *See, e.g., Petit v. U.S. Dep’t of Educ.*, 675 F.3d 769, 781–82 (D.C. Cir. 2012).

In concluding otherwise, the Commission first adopted an untenable reading of “involve” that changes, chameleon-like, based on the category of activities at issue. It then misconstrued the two activities it invoked, converting the “gaming” exception into an a justification for scrutinizing *any* event contract and the “unlawful activity” exception into an invitation for 50 state legislatures to upend an exclusively federal regime. None of that is consistent with the statute. Under a proper reading of the CEA, Kalshi’s contracts are not subject to public-interest review at all.

The CFTC’s public-interest analysis was arbitrary and capricious in any event. It employed a legally misguided standard. And, under that erroneous standard, the Commission trumpeted unsubstantiated, implausible speculation about the alleged perils of the Congressional Control Contracts, while ignoring the record evidence of their demonstrated economic and social benefits.

I. THE ORDER IS PREMISED ON A LEGAL ERROR AS TO WHEN EVENT CONTRACTS “INVOLVE” AN ENUMERATED ACTIVITY.

Contracts contingent on congressional control do not “involve” “terrorism,” “assassination,” “war,” “gaming,” or “unlawful” activity. 7 U.S.C. § 7a-2(c)(5)(C)(i). Elections do not constitute—or even relate to—any of those things. Accordingly, the CFTC has no power to review (much less ban) the Congressional Control Contracts. Concluding otherwise, the CFTC reasoned that an event contract “involves” certain enumerated activities (but not others) if *buying or selling it* would “amount[] to” one of those activities. Order at 7 n.19. That convoluted reading flunks basic canons of statutory interpretation. And the Commission’s criticisms of the common-sense, event-focused reading are meritless. That alone should be the end of this case.

A. The Commission’s Shifting Interpretation of “Involve” Is Wrong.

The meaning of the word “involve” is context-dependent. Dictionaries typically offer a range of possible definitions. *See, e.g., Involve, American Heritage Dictionary* 921 (4th ed. 2009) (“[t]o contain as a part; include”; “[t]o have as a necessary feature or consequence”; “[t]o engage as a participant”; etc.); *see also Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1009–10 (7th Cir. 2002) (“[D]ictionary definition[s] of ‘involve’ demonstrate[] the many levels of participation that could constitute involvement.”). As a result, context is crucial to identifying the word’s meaning in a particular statute or framework. *See Boim*, 291 F.3d at 1010; *NexPoint Diversified Real Est. Tr. v. Acis Cap. Mgmt., L.P.*, 80 F.4th 413, 419 (2d Cir. 2023).

Consider, for example, a theater that requires parents to accompany minors under 13 to any screening that “involves” violence or drug use. In context, the policy obviously refers to the content of the underlying film. The theater is not saying that parents must be present if the minors plan to use drugs or beat each other up during the movie, even though that interpretation may be semantically possible.

Here too, context makes clear that an event contract “involves” an enumerated activity when the *underlying event* constitutes or relates to that activity. That is the only reading of “involve” that works across all categories of enumerated activities. The Commission’s contrary interpretation—which asks whether *trading the contract* amounts to the enumerated activity—makes no sense as applied to most of the listed activities. And, more broadly, it is inconsistent with the CEA’s structure and purpose because it allows the exceptions to swallow the rule (and each other).

1. **Consistent Meaning.** The natural, event-focused interpretation is the only reading of “involve” that makes sense of every enumerated category. Indeed, as applied to three of the five extant activities—terrorism, assassination, and war—it is the *only* reading. An event contract “involve[s] ... terrorism” if the underlying event is or relates to a terrorist attack. 7 U.S.C. § 7a-2(c)(5)(C)(i)(II). A contract “involve[s] ... assassination” if the underlying event is or relates to the murder of a public official. *Id.* § 7a-2(c)(5)(C)(i)(III). And a contract “involve[s] ... war” if the underlying event is or relates to a military campaign. *Id.* § 7a-2(c)(5)(C)(i)(IV). The CFTC’s “amounts to” reading does not work with any of these activities, because buying or selling an event contract can *never* “amount to” terrorism, assassination, or war. As to the terrorism, assassination, and war exceptions, the word “involve” can therefore *only* refer to the event underlying a contract.

That event-focused reading fits the remaining enumerated categories, too. The “gaming” category reaches contracts contingent on *games*—for example, whether someone will win the Powerball lottery by a certain date, or whether a certain team will win the Super Bowl. It thus functions as a check on attempts to launder casino-style or sports gambling through the derivatives markets. *Id.* § 7a-2(c)(5)(C)(i)(V); *see also infra* at 22–23. The unlawful-activity category captures contracts contingent on illegal acts—for example, whether a company will defraud investors, or whether a famous painting will be stolen. It thus functions as a check on contracts that could incentivize crime. *Id.* § 7a-2(c)(5)(C)(i)(I). All of that makes perfect sense, and gives the word “involve” a consistent and coherent meaning across all applications.

The Order does not dispute that terrorism, assassination, and war require an event-focused interpretation of “involve.” Instead, it adopts a different interpretation of the very same word as applied to the “gaming” and “unlawful” activities. For those (and only those) categories, the Commission posits, “involve” refers to the act of *buying or selling* the contract, not the contract’s *event*. See Order at 7 n.19.

That shape-shifting approach ignores the basic rule of statutory construction that “identical words and phrases within the same statute should normally be given the same meaning.” *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). If a term’s “meaning is clear as used in one place, it will be construed to have the same meaning in the next place.” *Brown v. NHTSA*, 673 F.2d 544, 546 n.5 (D.C. Cir. 1982). That presumption applies even where a term appears across different sections of an act. See *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990). And it hardens as the gap between appearances shrinks. See, e.g., *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980) (same section); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (observing that “presumption [is] surely at its most vigorous when a term is repeated within a given sentence”); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 455–56 (2012).

Not surprisingly, the consistent-meaning canon is most potent as to “a *single* formulation,” which must mean the same thing “each time it is called into play.” *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). Consistent with that principle, courts “refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying.” *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 329 (2000). For example, the Supreme Court

“reject[ed] as unreasonable” a construction of “the phrase ‘other than’ to mean one thing when applied to ‘banks’ and another thing as applied to ‘common carriers’” when the phrase “modifies both words in the same clause.” *Bankamerica Corp. v. United States*, 462 U.S. 122, 129 (1983). Similarly, it rejected a construction of the “phrase ‘abridging the right to vote on account of race or color’ [to] mean[]” one thing “when it modifies ‘effect,’ but [to] mean[]” something else “when it modifies ‘purpose.’” *Reno*, 528 U.S. at 329. In these cases and others, the Court has recognized that, where a term “applies without differentiation to all ... categories ... that are its subject,” giving the term “a different meaning for each category would ... invent a statute rather than interpret one.” *Clark v. Martinez*, 543 U.S. 371, 378 (2005).

The Order flouts that bedrock interpretive principle. Rather than read “a *single* formulation ... the same way each time it is called into play,” *Ratzlaf*, 510 U.S. at 143, the CFTC gives “involve” a “different meaning for each category” of enumerated activities, *Clark*, 543 U.S. at 378. A contract “involves” terrorism, assassination, or war if the contract is contingent on its occurrence. But a contract “involves” gaming or unlawful activity if *purchasing* it would *amount to* that activity. The Commission’s interpretation of “involve” must fail for that reason alone.

2. Context. Statutory context confirms that conclusion. Courts interpret provisions “with a view to their place in the overall statutory scheme.” *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989); *Blackmon-Malloy v. U.S. Capitol Police Bd.*, 575 F.3d 699, 708 (D.C. Cir. 2009). And statutory components should be construed to work “in harmony” rather than “at cross-purposes.” *Jones v. Hendrix*,

599 U.S. 465, 478 (2023); *James Madison Ltd. ex rel. Hecht v. Ludwig*, 82 F.3d 1085, 1093 (D.C. Cir. 1996). Accordingly, courts refuse to construe discrete exceptions in a way that would “read out the rule.” *United States v. Slatten*, 865 F.3d 767, 807 (D.C. Cir. 2017); *Comm’r v. Clark*, 489 U.S. 726, 739 (1989). Yet the Order’s inconsistent “amounts to” gloss would work “at cross purposes” with the rest of the CEA and, indeed, upend the statutory scheme in at least two different ways.

First, the default under the CEA is that regulated exchanges may list event contracts without special scrutiny. 7 U.S.C. § 7a-2(c)(5)(B) (requiring CFTC approval “unless” contract would violate statute or regulations). As discussed below, however, the Order defines “gaming” to mean staking money on any “contingent event.” Order at 8 & n.21–22; *see infra*, Part II.A. Yet, by definition, anyone who trades an event contract is staking money on a contingent event. 7 U.S.C. § 1a(19)(iv) (“commodity” includes any “occurrence, extent of an occurrence, or contingency” that is “beyond the control of the parties” and “associated with” economic consequences). As a result, the Order’s interpretation of “involve” (at least when combined with its interpretation of “gaming”) affords the CFTC a roving mandate to review—and potentially to ban—*any* event contract. That flips the statutory default, dramatically expanding the CFTC’s own power and transforming an orderly regime of narrow exceptions into an across-the-board public-interest test. It thus improperly swallows both the rule and the other carefully enumerated categories. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (articulating the “interpretive principle that every clause and word of a statute should have meaning”).

Second, the act-of-trading approach makes a hash of the “unlawful activity” exception too. Congress had no need to authorize public-interest review of contracts whose trading is already illegal under *federal* law. And if a *State* tried to ban trading in event contracts, its law would be preempted by the CFTC’s “exclusive jurisdiction” over derivatives markets. 7 U.S.C. § 2(a)(1)(A); *see also Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (Friendly, J.) (explaining that CEA “preempts the application of state law” for regulated markets); *Am. Agric. Movement, Inc. v. Bd. of Trade*, 977 F.2d 1147, 1156 (7th Cir. 1992) (CEA preempts “application[s] of state law [that] would directly affect trading on or the operation of a futures market”); *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 563 (6th Cir. 1998). So taken at face value, the CFTC’s interpretation of “involve” would leave the “unlawful activity” exception “with no work to perform”—another violation of the presumption against superfluity. *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022).

Alternatively, reading “involve” to turn the “unlawful activity” exception into a backdoor way for States to effectively reverse-preempt the CEA would improperly short-circuit exclusive federal regulation of event contracts. *But see Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989) (applying presumption against “making the application of [a] federal act dependent on state law”). It would also invite confusion by making an indeterminate nationwide survey of 50 state laws a prerequisite for review of any event contract. These contextual difficulties, like the others, are readily avoided by adopting the simple, intuitive, consistent, event-focused interpretation of “involve” that makes sense of the entire scheme.

B. The Order’s Attacks on the Event-Based Reading Are Meritless.

The Order attempts to justify its inconsistent, convoluted reading of “involve” by criticizing the simpler, event-focused interpretation. But neither of its arguments holds water. Indeed, both rest on demonstrably false premises.

1. Other Statutory Uses. The Order first asserts that “involve[s]” must mean something broader than “based on” because the CEA uses the latter (or the term “underlying”) when referring to a contingent event or commodity on which a contract is based. Order at 6. But in fact, Congress used all three of those terms—“involves,” “based on,” and “underlying”—in different ways across different contexts. Most relevant here, the CEA repeatedly *does* use “involve” to refer to the underlying commodity or subject of a contract or transaction.⁴ That is fully consistent with the natural event-focused reading of the term. Meanwhile, when Congress in the CEA wished to say that one act *amounts to* another, it said so *without* using the word “involve.”⁵ The broader statutory text thus disproves the Order’s claim that the CEA always uses terms other than “involve” to refer to a contract’s basis. (And of course, the Commission must concede that “involve” does *exactly that* as to the terrorism, assassination, and war categories. *See* Order at 7; *supra* at 16.)

⁴ *See, e.g.*, 7 U.S.C. §§ 2(c)(2)(D)(ii)(III)(aa) (“the typical commercial practice in cash or spot markets for the commodity *involved*”); 6c(b) (“transaction *involving* any commodity regulated under this chapter”); 15b(d)–(h) (“cotton *involved*” in contracts); 23(b)(1) (“transactions *involving* different commodities”); 2(a)(1)(D)(i) (“contracts[] and transactions *involving* ... a security futures product”) (all emphases added).

⁵ *See* 7 U.S.C. § 25(a)(1)(D)(ii) (private right of action available where “violation *constitutes* ... a manipulation of the price of [a] contract” (emphasis added)).

In any event, the Commission’s assumption that “involve” must carry some broadening effect is entirely consistent with the event-focused reading of the text. A contract might “involve” an activity (even if it is not strictly “based on” that activity) if its underlying event is *closely tied* to an enumerated activity. For instance, a contract on whether the Ukrainian military will acquire certain munitions in 2024 might be said to “involve ... war,” even though its underlying event is not itself an act of war. A contract on whether a certain CEO will be arrested for fraud might be said to “involve” unlawful activity even though the arrest is not itself unlawful. In other words, Congress could have chosen the term “involve” to prevent *circumvention* through contracts that are based on events technically distinct from, but still closely related to, the enumerated activities. The intuition that “involve” is broader than some alternatives therefore does not warrant, let alone require, dramatically shifting the statute’s focus from the *underlying event* to the *act of trading*.

2. **Null Sets.** The Order also posits that the “gaming” category would be “a null set” under an event-based interpretation of “involve,” since no event contract’s “underlying event, itself, is ‘gaming.’” Order at 7 n.18. Here too, the premise fails. Consider a contract on whether someone wins the Powerball before a certain date. The lottery—a quintessential game of chance—forms the underlying contingency. Or consider contracts pegged to the outcome of the World Series of Poker or other gaming tournaments. Those are clearly contracts involving “gaming,” and thus subject to public-interest review under a common-sense reading of the CEA. Indeed, according to the CFTC itself, the “gaming” category encompasses contracts based on sporting

events. *See id.* at 8. And contracts contingent on sports betting are not hypothetical. *See* CFTC Release No. 8345-20, *CFTC Announces Review of RSBIX NFL Futures Contracts Proposed by Eris Exchange, LLC* (Dec. 23, 2020) (contracts predicated on point spreads and total points in NFL games). The only relevant legislative history, moreover, confirms that contracts on “sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament” were *precisely* what Congress had in mind as “gaming” contracts. 156 Cong. Rec. S5907 (daily ed. July 15, 2010).

* * *

In sum, statutory context confirms that an event contract “involves” a listed “activity” if it is *contingent* on that activity. The CFTC’s “amounts to” reading breaks fundamental rules of statutory interpretation and scrambles the CEA’s structure and function. Because Congressional Control Contracts do not “involve” any enumerated activity under the proper construction of that term, this Court need go no further. Kalshi is entitled to list these contracts on its regulated exchange.

II. **THE ORDER ALSO MISCONSTRUES THE “GAMING” AND “UNLAWFUL ACTIVITY” CATEGORIES.**

Even under the Commission’s erroneous “amounts to” reading of “involve,” the Order’s analysis still fails. Its overbroad definition of “gaming” would fundamentally alter the statutory scheme governing event contracts and render every other category superfluous. And its approach to “unlawful activity” is self-defeating, because States cannot—and have not purported to—ban federally regulated derivatives. Trading a Congressional Control Contract therefore does not “amount to” either “gaming” or a violation of state law. This legal error too requires vacatur of the Order.

A. Trading Congressional Control Contracts Does Not Amount to “Gaming.”

To sweep the trading of Congressional Control Contracts into the “gaming” category, the Order reasons that (1) “gaming” means “gambling,” which some statutes define to include staking money on the “outcome of a game, contest, or contingent event”; and (2) “taking a position in the Congressional Control Contracts would be staking something of value upon the outcome of a contest.” *See* Order at 8–10. That logic hinges on an overbroad interpretation of “gaming” that cannot be squared with ordinary usage and is flatly foreclosed by statutory context.

1. **Ordinary Meaning.** To begin, the CEA says “gaming,” not “gambling.” And in plain English, “gaming” typically refers to “playing at games of chance for money.” *Gaming*, *Concise Oxford English Dictionary* (11th ed., rev. 2008); *see also Gaming*, Merriam-Webster.com (“playing games for stakes”); *Game*, *New Oxford American Dictionary* (3d ed. 2010) (“games of chance for money”). “Gaming” is most closely associated with “casino gambling.” *Gaming*, *American Heritage Dictionary* (4th ed. 2009); *see also Gaming*, *Cambridge Dictionary of American English* (2d ed. 2008) (“industry in which people gamble by playing cards and other games in casinos”). It can describe betting on other games too. *See gaming contract*, *Chambers Dictionary* (13th ed. 2014) (“a wager upon any game (eg a horse race or football match)”); *Gaming*, *Bowyer Law Dictionary* (2011 ed.) (“[a] contract to enter a game of skill or chance that one might win or lose”; parties “play a game with certain rules at cards, dice, or another contrivance”). But the common denominator, as the term’s root itself suggests, is the existence of a *game*.

That is just as true in federal and state statutes as it is in common parlance. Federal statutes, the most relevant source for determining congressional intent, use “gaming” to refer to betting on *games*. *See, e.g.*, 25 U.S.C. § 2703(6)–(8) (defining “gaming” classes in Indian Gaming Regulatory Act). Indeed, the only federal statute that the Order cites to justify its sweeping reading of “gaming” never uses that term, except to cross-reference other laws (such as the Indian Gaming Regulatory Act). *See* 31 U.S.C. §§ 5361–5367. Congress instead used “bet or wager”—not “gaming”—to refer to “staking ... something of value upon the outcome of a contest of others.” *Id.* § 5362(1)(A). And it expressly *excluded* derivatives regulated under the CEA—like event contracts—from such “bet[s]” and “wager[s].” *Id.* § 5362(1)(E)(iv).

State legislatures likewise overwhelmingly use “gaming” and related terms to refer to playing or betting on *games*, not to encompass any staking of money on a contingency. *See, e.g.*, Iowa Code § 725.7(1) (“illegal gaming” means “[p]articipat[ing] in a game for any sum”); Mass. Gen. Laws ch. 23K, § 2 (“gaming” means “dealing, operating, carrying on, conducting, maintaining or exposing any game for pay”).⁶

⁶ *See also, e.g.*, Ark. Code. Ann. §§ 5-66-104 (prohibiting “gaming devices”), 5-66-106 (prohibiting “bet[ting] any money ... on any game”); Cal. Bus. & Prof. Code § 19805(f) (defining “gambling” as “to deal, operate, carry on, conduct, maintain, or expose for play a controlled game”); Colo. Rev. Stat. Ann. § 44-30-103(22) (defining “gaming” as “physical and electronic versions of slot machines, craps, roulette, and the card games of poker and blackjack”); Conn. Gen. Stat. § 12-557b(6); Fla. Stat. §§ 849.01 (prohibiting any “gaming table or room, or gaming implements or apparatus, ... for the purpose of gaming or gambling”); 849.08 (defining “gambling” as “play[ing] or engag[ing] in any game at cards ... or other game of chance”); 720 Ill. Comp. Stat. 5/28-1(a)(1) (“A person commits gambling when he or she ... plays a game of chance or skill for money”); Ky. Rev. Stat. § 238.505 (defining “charitable gaming” by reference to games of chance); La. Stat. § 27:205 (defining legal “gaming operations” and “gaming activities” as “the offering or conducting of any game or

Consistent with ordinary usage, federal law, and state law, “gaming” must therefore involve a *game*. Mere betting—in the absence of an underlying “game”—

gaming device in accordance with” state law); Md. Code Ann., Crim. Law § 12-101(d)(1)(ii) (defining “gaming device” as “a game or device at which money ... is bet, wagered, or gambled”); Miss. Code. Ann. § 75-76-5(l) (“‘Gaming’ or ‘gambling’ means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter”); Mo. Rev. Stat. § 313.800(13) (defining legal “gambling game[s]” as “games of skill or games of chance on an excursion gambling boat”); Nev. Rev. Stat. §§ 463.0152 (“‘Game’ or ‘gambling game’ means any game played with cards, dice, equipment or any mechanical or electronic device or machine for money”); 463.0153 (“‘Gaming’ or ‘gambling’ means to deal, operate, carry on, conduct, maintain or expose for play any game as defined [by law]”); N.J. Stat. § 5:12-22 (defining “gaming” and “gambling” as “[t]he dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game”); N.M. Stat. Ann. § 60-2E-3(P) (defining “gaming” as “offering a game for play”); N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1301(20) (defining “gaming” and “gambling” as “dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game”); N.C. Gen. Stat. § 14-292 (defining “gambling” as operating, playing, or betting on “any game of chance”); Ohio Rev. Code Ann. §§ 2915.02(A)(2) (defining illegal “gambling” by reference to “any game of chance”), 2915.01(D) (defining “game of chance” as “poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain”); 18 Pa. Stat. & Cons. Stat. Ann. § 5513(a)(1) (defining illegal “gambling” as maintaining a “slot machine or any [other] device to be used for gambling purposes”); 4 Pa. Stat. and Cons. Stat. Ann. § 1103 (defining legal “gaming” as “licensed placement, operation and play of slot machines, table games and interactive games”); 41 R.I. Gen. Laws § 41-9-1 (defining “gambling” by reference to “horseracing, dog racing, and jai alai”); S.C. Code Ann. § 3-11-100(2) (“‘Gambling’ or ‘gambling device’ means any game of chance and includes, but is not limited to, slot machines, punchboards,” etc.); S.D. Codified Laws §§ 22-25-1 (defining “gambling” as “wager[ing] on a sporting event or engag[ing] in gambling in any form with cards, dice, or other implements or devices”); 42-7B-1 (authorizing “limited gaming” including “card games, slot machines, craps, roulette, keno, and wagering on sporting events” in certain areas); Vt. Stat. Ann. tit. 13, § 2141 (defining “gambling” by reference to “play or hazard at any game”); Va. Code Ann. § 58.1-4100 (defining “casino gaming” and “game[s]” to mean “baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, Mah Jongg, electronic table games, hybrid table games, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs, or any variation of the aforementioned games, and any other activity that is authorized by the Board as a wagering game or device”).

does not constitute “gaming.” If two employees stake \$5 on whether their boss will show up for work on Monday, they have certainly made a bet, but no one would say that they are “gaming.” Likewise, if a business buys derivatives pegged to the future price of pork bellies, that might be colloquially characterized as “betting” on that market, but it certainly is not “gaming.”

Purchasing one of Kalshi’s Congressional Control Contracts is not “gaming,” either. Elections are not games. They are not remotely analogous to casino games, lotteries, bingo, or even sporting events. Elections, unlike “games,” are not staged for entertainment or to facilitate speculation for sport. *See Game, Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020) (“engaged in for diversion or amusement”); *see also* AR 1315 (“Gaming describes wagering money on an occurrence that has no inherent economic value itself other than the money wagered.”). Rather, elections—again, unlike games—have extrinsic effects outside the contest itself, and indeed carry significant economic consequences in the real world. Buying or selling election event contracts therefore does not amount to “gaming.”

2. Statutory Context. The Order defined “gaming” more broadly, citing a few dictionaries and state laws that define “gambling” (not “gaming”) to include staking money on *any* contingent event beyond the parties’ control. *See* Order at 8–9. But as discussed above, that interpretation of “gaming” (when combined with the Commission’s interpretation of “involve”) would turn the statutory default on its head and render the remaining categories superfluous. *See supra* at 19.

Again, defining “gaming” that broadly would subject *every* event contract to heightened public-interest review, because anyone who trades an event contract is by definition staking money on a contingency beyond his control. Yet, as Justice Holmes observed over a century ago: “It seems to us an extraordinary and unlikely proposition that the dealings which give its character to the great market for future sales in this country are to be regarded as mere wagers.” *Bd. of Trade v. Christie Grain & Stock Co.*, 198 U.S. 236, 249 (1905). Indeed, that construction would render superfluous all of the other enumerated activities—ignoring the “interpretive principle that every clause and word of a statute should have meaning.” *Polansky*, 599 U.S. at 432. And it would grant the CFTC a roving commission to scrutinize the social utility of all event contracts—a sweeping, surprising power Congress would not hide in a single word. *See Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (Congress does not “hide elephants in mouseholes”). Especially when that word on its face—and based on its legislative history (*supra* at 23)—appears to be concerned with casinos and sports, not with the premise of the entire industry. Statutory context thus forecloses the Commission’s overbroad approach to “gaming.” Giving the term its ordinary meaning—betting on *games*—avoids all of those pitfalls.

Perhaps aware that its logic would scramble the statutory scheme—but still determined to wedge Kalshi’s contracts into a suspect category—the CFTC gestured at a potential limiting principle: “gaming” could be limited to wagers on “contests,” supposedly including elections. *See Order* at 9–10 & n.25. That attempt to thread the needle both misconstrues “gaming” and mischaracterizes elections.

To start, “gaming” is defined by reference to “games,” not “contests.” *See supra*, Part II.A.1. In fact, the Order cites no dictionary or statutory definition of “gaming” that invokes “contests.” And its lone federal statute refers to “contest[s] of others” but not to “gaming.” *See* 31 U.S.C. § 5362(1)(A).

States that define “gambling” by reference to “contests” or otherwise refer to “contests” in their gambling statutes do not bridge the gap. *See* Order at 8 n.22 & 9 n.24 (collecting 13 state statutes). Even setting aside that “gaming” is different from “gambling,” *elections* are not “contests” for purposes of those laws. More than half of the cited statutes use the phrase “contest of chance,” which is an obvious reference to traditional gambling activities, not elections.⁷ The others use the word “contest” in ways that likewise plainly exclude elections. Delaware and Florida, for example, ban “wagers upon the result of any trial or contest ... of skill, speed or power of endurance of human or beast.” Del. Code Ann. tit. 11, § 1403(1); Fla. Stat. § 849.14. Louisiana defines “gambling” as “any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value.” La. Stat. § 14:90(A)(1)(a).⁸

The word “contest” in these statutes must be understood “by the company it keeps.” *Yates v. United States*, 574 U.S. 528, 543 (2015); *see also Dole v. United*

⁷ *See* Ala. Code § 13A-12-20(4); Alaska Stat. Ann. § 11.66.280(2)–(3) (defining “contest of chance” as “a contest, game, gaming scheme, or gaming device”; defining “gambling” as staking “something of value upon the outcome of a contest of chance”); Haw. Rev. Stat. § 712-1220; Me. Rev. Stat. tit. 17-A, § 952(3)–(4); Mo. Rev. Stat. § 572.010(4); N.Y. Penal Law § 225.00(2); Wash. Rev. Code § 9.46.0237.

⁸ *See also* Ky. Rev. Stat. § 528.010(6)(a) (“the outcome of a contest, game, gaming scheme, or gaming device”); Utah Code Ann. § 76-10-1101(a) (same).

Steelworkers of Am., 494 U.S. 26, 36 (1990) (“The traditional canon of construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning.”). In context, these statutes clearly use “contest” to reach events that are not usually called “games” but share key attributes with them—*e.g.*, horseraces or boxing matches. Such “contests” are staged purely for entertainment and to facilitate betting. They have no independent significance; their outcomes carry no economic risks. AR 1315. Elections are nothing like the other terms on those lists. They have extrinsic effects and vast economic consequences. They therefore cannot be treated as “contests” under any State’s gambling laws. Indeed, many States that define “gambling” to include betting on “contests” *separately* ban betting on elections—a wholly unnecessary step if “contests” already captured elections.⁹

In short, the Commission is trying to have it both ways by reading “gaming” to reach elections, yet resisting the overbroad “any contingency” construction that would obviously upend the CEA. But there is no viable middle road here. The only workable construction of “gaming” requires the presence of a *game*. Because the Congressional Control Contracts do not involve a game, and trading them does not amount to betting on a game, this statutory exception is not implicated by Kalshi’s contracts.

⁹ See Ariz. Rev. Stat. Ann. § 16-1015; Ga. Code Ann. § 16-12-21(a)(1)–(2) (separate prohibitions for betting on a “game or contest” and betting “upon the result of any ... election”); 720 Ill. Comp. Stat. 5/28-1; Mich. Comp. Laws § 168.931(l); Neb. Rev. Stat. § 28-1101(4); N.J. Stat. § 19:34-24; Or. Rev. Stat. § 260.635; Tex. Penal Code Ann. § 47.02(a) (person commits “gambling” if he “(1) makes a bet on the partial or final result of a game or contest” or (2) “makes a bet on the result of any ... election”). See also *infra*, Part II.B (addressing significance of these prohibitions).

B. Trading Congressional Control Contracts Is Also Not “Unlawful” Activity.

The Order similarly misreads the “unlawful” activity exception. Even under the Commission’s erroneous reading of “involve,” that exception does not apply here because buying or selling a Congressional Control Contract does not amount to illegal activity. The Commission’s contrary reasoning is incoherent.

The Commission contends that purchasing one of Kalshi’s contracts would be illegal in jurisdictions that prohibit betting on elections by statute or common law. *See* Order at 11–13 & nn.26–27. But those statutes cannot be construed to ban the trading of event contracts on federally regulated exchanges; as explained above, the federal scheme vests exclusive jurisdiction over such trading in the Commission and thus preempts any contrary state laws. *See* 7 U.S.C. § 2(a)(1); *Leist*, 638 F.2d at 322; *supra* at 20. Recognizing as much, most of the state gambling laws cited by the Order expressly *carve out* lawful business transactions, including commodity futures and other derivatives.¹⁰ Those carve-outs reflect what federal law has long acknowledged: Although many bona fide transactions falling under CFTC jurisdiction may *look like* gambling to a layman, they are nothing like craps, lotteries, or horseracing.

¹⁰ *See* Ala. Code § 13A-12-20(4); Alaska Stat. Ann. § 11.66.280(3)(A); Ariz. Rev. Stat. § 13-3301(6); Colo. Rev. Stat. Ann. § 18-10-102; Haw. Rev. Stat. § 712-1220; Idaho Code § 18-3801(2), (5); Ind. Code § 35-45-5-1(d)(2); Kan. Stat. Ann. § 21-6403(a)(1); Minn. Stat. § 609.75, Subd. 3(1)–(2); Mo. Rev. Stat. § 572.010(4); N.M. Stat. Ann. § 30-19-1(B); N.D. Cent. Code Ann. § 12.1-28-01; Ohio Rev. Code Ann. § 2915.01; Okla. Stat. Ann. Tit. 21, § 981(1)(a); Or. Rev. Stat. § 167.117(7)(a); Tenn. Code Ann. § 39-17-501(2)(A); Utah Code Ann. § 76-10-1101(c)(i); Wash. Rev. Code § 9.46.0237; Wis. Stat. Ann. § 945.01(1)(a); Wyo. Stat. Ann. § 6-7-101(a)(iii)(B)–(C).

The Order ultimately admits as much, acknowledging that “transacting these products ... *cannot, in and of itself*, be an ‘activity that is unlawful under any ... State law.’” Order at 13 n.28 (emphasis added). That concession is dispositive: Because States cannot prohibit “trading in” event contracts, purchasing them cannot “amount to” activity prohibited by state law. *Id.* at 7 n.19; *see also supra* at 20.

Realizing this flaw, the Order tries to introduce yet a *third* reading of the word “involve.” Even if trading in these contracts is legal, the Order posits, it nevertheless “entail[s]” or “relate[s] closely” to illegal activity. Order at 13 n.28. What does that even mean? How can an activity “entail” illegality without being illegal? How “closely” must a legal activity “relate” to an illegal one? In how many States? The Order provides no answers to justify its bizarre interpretive manipulation. Here too, the Commission’s “interpretation” appears to be merely an outcome-driven effort to block the Congressional Control Contracts—not honest statutory construction.

In any event, taking the Order’s incoherent reasoning at face value would once again upend the CEA’s regulatory scheme by empowering state legislatures to dictate the regulation of event contracts. As the Order acknowledges, a number of States treat staking money on *any* contingent future event as illegal gambling.¹¹ New York,

¹¹ *See, e.g.*, Ala. Code § 13A-12-20(4) (“future contingent event not under his control or influence”); Alaska Stat. Ann. § 11.66.280(3); Ariz. Rev. Stat. § 13-3301(8); Colo. Rev. Stat. Ann. § 18-10-102; Haw. Rev. Stat. Ann. § 712-1220; Idaho Code § 18-3801; Me. Rev. Stat. tit. 17-A, § 952; Mich. Comp. Laws § 750.301; Miss. Code Ann. § 97-33-1; Mo. Ann. Stat. § 572.010; N.H. Rev. Stat. Ann. § 647:2; N.J. Stat. § 2C:37-1; N.D. Cent. Code Ann. § 12.1-28-01; Or. Rev. Stat. § 167.117(7); Va. Code Ann. § 18.2-325(1); Wash. Rev. Code Ann. § 9.46.0237; Wyo. Stat. Ann. § 6-7-101.

for example, prohibits “risk[ing] something of value upon ... a future contingent event not under [one’s] control,” N.Y. Penal Law § 225.00(2)—which closely tracks the federal definition of an event contract, 7 U.S.C. § 1a(19)(iv)(I). On the Commission’s view, therefore, trading any event contracts would “relate closely” to activity that is unlawful in New York. *See* Order at 13 n.28. As a result, the Order would apparently subject *every* event contract to public-interest review. That would moot the provision conferring “exclusive jurisdiction” on the CFTC, 7 U.S.C. § 2(a)(1)(A), and vest 50 state legislatures with control over application of a federal statute. That cannot be right. *See Holyfield*, 490 U.S. at 43 (“We start ... with the general assumption that ‘in the absence of a plain indication to the contrary, ... Congress when it enacts a statute is not making the application of the federal act dependent on state law.’”).

* * *

Even with the benefit of its novel and misdirected interpretation of “involve,” the Commission is forced to bob and weave to justify subjecting the Congressional Control Contracts to public-interest review. Those efforts fail, because trading these event contracts cannot be squeezed into the categories of either “gaming” or “unlawful activity”—at least not without mangling the CEA’s structure, rendering every other exception surplusage, and turning the principle of federal supremacy on its head. Of course, Congress is free to forbid trading of political event contracts, or to authorize the Commission to do so—it would be as simple as adding contracts that “involve” “elections” to the enumerated activities in the statute. But Congress did not do that, and the Commission’s efforts to rewrite the CEA are futile.

III. **THE ORDER'S PUBLIC-INTEREST FINDING IS ARBITRARY AND CAPRICIOUS.**

For the reasons already explained, the Commission had no authority to subject Kalshi's Congressional Control Contracts to public-interest review in the first place, because its conclusion that the contracts "involve" "gaming" or "unlawful" activity is erroneous as a matter of law on multiple levels. That is enough to require vacatur of the Order, and so the Court need not go further. But even assuming a public-interest analysis were authorized, the Commission's finding that the Congressional Control Contracts are contrary to the public interest is arbitrary and capricious. This is yet another independent basis for vacating the Order.

An agency's decision is arbitrary and capricious if it relies on improper factors, ignores important considerations, or offers explanations that are implausible or run counter to the evidence. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency also acts arbitrarily and capriciously when it fails to "meaningfully address comments and evidence that undercut its conclusion." *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1112–14 (D.C. Cir. 2019).

The Commission violated those rules of reasoned decisionmaking here. *First*, it announced an arbitrarily heightened standard for assessing the economic utility of Kalshi's contracts, and then disregarded evidence showing that they satisfy even that arbitrary standard. *Second*, the Commission ignored record evidence of non-economic benefits, failing to account for their impact on the public interest. *Third*, the CFTC credited unsubstantiated and unreasonable speculation about the contracts' threat to "election integrity," again while ignoring the contrary record materials.

A. The CFTC Imposed and Misapplied an Arbitrarily Heightened “Direct Effects” Standard for Evaluating Economic Utility.

The Order centered its public-interest inquiry around “economic purpose,” asking whether the Congressional Control Contracts have economic utility. Insisting on *some* economic purpose is sensible, given that the CEA itself identifies the role of its regulated transactions as serving “a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information.” 7 U.S.C. § 5(a).

The problem for the Commission, of course, is that partisan control of Congress has vast economic consequences—both directly and through its influence on policy. That is why major financial institutions routinely offer projections on the economic impacts of election outcomes. Ahead of the 2020 federal election, for instance, Bank of America analyzed the likely effects of different congressional outcomes on fiscal stimulus, tariffs, tax rates, and regulations. *See* AR 2991. Researchers, too, have consistently found that the balance of political power affects the prices of equities, commodities, and other assets. AR 2992–93 (collecting studies). Businesses and individuals agree: A software company serving green-energy ventures explained in a comment that its success hinges in part on political outcomes, including control of Congress and associated policy changes. *See* AR 1597. A fund founder set forth how biotech startups face congressional risks, including cuts to research funding and stalled regulatory appointments. *See* AR 1567–68. And the CEO of a recycling robotics firm recounted that legislation expanding recycling is likely to rise or fall depending on which party triumphs. *See* AR 1533.

Because control of Congress has meaningful economic effects, Congressional Control Contracts would further an “economic purpose” by allowing firms to manage those risks (*i.e.*, hedging) and enabling the market to price them (*i.e.*, price-basing). That is not their *only* possible use, but their economic purpose is undeniable.

Unable to dispute that reality, the Commission changed the standard. The economic effects of congressional control, the CFTC opined, are too “diffuse and unpredictable” to warrant hedging or price-basing because they depend on other factors—*e.g.*, which bills end up on the legislative agenda, presidential vetoes, and litigation. Order at 16–17. In other words, the Commission concluded that elections lack *direct* economic effects, and therefore that the Congressional Control Contracts would serve no economic purpose. That analysis is wrong—and shirks the reasoned decision-making requirement—twice over. The CFTC’s novel test is misguided in its own right, and the Commission also misapplied it here.

First, insisting on “direct” effects misunderstands the economic function of hedging and price-basing. The point of hedging is to *mitigate risk*, not (like insurance) to *offset precise losses*. And risk is all about uncertainty. Consider a hotel that acquires contracts on a hurricane impacting the Gulf of Mexico. Whether such a hurricane would *actually* harm the hotel’s bottom line depends on various factors, including where the storm strikes, whether it damages the hotel, and whether news coverage deters tourists. *See* AR 2999. Indeed, if the hurricane ends up hitting neighboring beaches but leaving the immediate coastline untouched, the hotel could bring in *more* revenue by attracting a larger share of the business. But the *risk* of

loss climbs if a storm materializes *at all*—and that risk warrants hedging. As this example illustrates, it is commonplace for businesses to buy hedging instruments without “certainty that the event ... will actually manifest in net harm for the company.” *See* AR 1528. And for the same reasons, a market in event contracts facilitates price-basing, even assuming the event only carries indirect and uncertain economic effects. Determining the risk of a hurricane, to return to the hypothetical, would help the market to accurately judge the value of the hotel.

Political risks are no different. As renowned investor Jorge Paolo Lemann explained, “[a]n investment may look very different if hypothetical legislative and regulatory events” occur—and if an election outcome makes those events “materially more likely,” it “poses significant risk to the parties in the deal.” AR 1590. For example, if Republicans take control of Congress in 2024, renewable-energy subsidies will not vanish overnight. But a Republican win would present a serious *risk* of cuts. The Congressional Control Contracts would allow green-energy firms to hedge that risk. *See* AR 1597 (firm would hedge against risk that a “hostile” government “could be elected,” not merely “that a particular policy will be enacted”); AR 1553 (investor explaining how business “risks indisputably rise when certain Congresses come into power, and hedging instruments are needed to mitigate that risk”). Likewise, the Congressional Control Contracts would allow the market to more accurately price firms and assets that are exposed to political risks—“direct” or otherwise. *See* AR 1423–26 (explaining price-basing utility of election contracts); AR 1452–53 (same).

Second, the Commission’s analysis fails as a factual matter—put differently, the CFTC ignored the evidence that the Congressional Control Contracts satisfy its own “direct effects” standard. Which party wins control of Congress *does* have direct economic effects, and therefore *does* warrant hedging and price-basing even on the Commission’s flawed understanding of those functions.

Consider a consulting firm with deep ties to one party. Congressional control by the other party would directly harm that firm’s business, separate and apart from any policy changes the new Congress might enact. Kalshi’s contracts would allow the firm to hedge against that risk, and allow others to determine the firm’s value more accurately. *See* AR 3001. Moreover, the record proves that the partisan balance of political power can *itself* influence investor behavior independent of any particular legislation.¹² Indeed, it features specific assets whose value is directly linked to partisan control. For example, JP Morgan projected that Democratic victory in the 2020 election would boost the price of, among other things, “China-exposed stocks” and “renewables.” AR 2991. Sure enough, the Democratic Party’s Senate takeover *did* trigger a large rally in the green-energy sector—well before the new majority passed any laws.¹³ Similarly, President Bush’s election in 2000 raised the value of

¹² *See, e.g.*, AR 1348 (cannabinoid company explaining that “potential” adverse actions by Congress influence investor behavior); AR 1597 (green-energy software firm explaining that a potential cofounder did not join the venture due to concerns about harmful election outcomes).

¹³ *See* AR 1397. The iShares Global Clean Energy ETF surged 17% between December 31, 2020, and January 8, 2021, as Democratic candidates won runoff elections in Georgia to take control of the Senate; the Dow Jones Industrial average rose by only 1.6% over the same period. *Id.*; *see also* AR 1396 (other examples).

tobacco companies by 13%.¹⁴ Another example: When Senator Jeffords swung Senate control by joining the Democratic Party in 2001, valuations of firms that donated to Democrats rose, while Republican-aligned companies saw valuations fall.¹⁵ These well-documented patterns are far from “unpredictable.” Order at 10, 16, 18–19. And so, not surprisingly, numerous commenters *specifically attested* that they would use the Congressional Control Contracts for hedging.¹⁶ There could hardly be any more probative or compelling evidence of the contracts’ hedging purpose.

On all of these points, the CFTC “refused to engage with the commenters” points and evidence, *Del. Dep’t of Nat. Res. & Env’t Control v. EPA*, 785 F.3d 1, 15 (D.C. Cir. 2015), and instead “cherry-pick[ed]” observations that served its desired outcome, *Sierra Club v. Salazar*, 177 F. Supp. 3d 512, 540 (D.D.C. 2016). Indeed, the Commission baldly asserted that the contracts would not serve any hedging function in the face of concrete contrary proof staring at it right from the pudding bowl.

In sum: In analyzing the economic purpose of Kalshi’s Congressional Control Contracts, the Commission used a “direct effects” standard with no basis in law or economics, and then ignored copious record evidence that congressional elections *do* have direct economic effects. That is textbook arbitrary-and-capricious reasoning.

¹⁴ See AR 1365 (citing B. Knight, *Are policy platforms capitalized into equity prices? Evidence from the Bush/Gore 2000 Presidential Election*, 90 J. Pub. Econ. 751 (2006)).

¹⁵ See AR 2993 (citing S. Jayachandran, *The Jeffords Effect*, 49 J. L. & Econ. 397 (2006)); see also AR 3004–05 (citing research).

¹⁶ See, e.g., AR 1348, 1375–76, 1386–87, 1391, 1532, 1533, 1539–40, 1590–91, 1597, 1613, 3367.

B. The CFTC Ignored the Evidence of Non-Economic Benefits.

The Commission also ignored robust record evidence that event contracts like Kalshi's have important benefits beyond hedging and price-basing. Nothing in the CEA suggests the CFTC is *limited* to weighing economic considerations. Indeed, the Order itself devoted much of its analysis to amorphous political concerns. *See* Order at 19–23. Accordingly, the CFTC was obligated to consider the evidence that political prediction markets generate socially valuable data. *See Carlson v. Postal Regul. Comm'n*, 938 F.3d 337, 344 (D.C. Cir. 2019) (agency must “respond to significant points and consider all relevant factors”). It failed to do so.

The record on this point is robust. For example, a former chairman of the Council of Economic Advisers explained that the White House consulted prediction-market data “to understand what informed traders with money at stake would expect.” AR 1549; *see also* AR 1451–53, 1494–99. A Nobel laureate economist (among others) noted that influential studies have relied on the “powerful resource” of prediction data to develop “valuable” political, economic, and social insights. AR 1750–53; *see also* AR 1404 (collecting research); AR 1438–39 (similar); AR 1452–53 (example of study using “prediction market prices to infer market beliefs” and thus make “accurate measurements of [climate] abatement costs”). And such data is not just useful for academics: It offers the general public a neutral, market-driven alternative to traditional polling, which has proven unreliable in recent years. *See, e.g.*, AR 1577 (explaining why Kalshi's contracts would advance accuracy and transparency); AR 1543–44 (collecting media coverage relying on prediction markets

and research finding that such data outperforms traditional forecasting); AR 1584 (human-rights activist who relies on prediction markets as alternative to unreliable polls and fake media reports); AR 1437 (explaining how election contract markets can build social consensus and educate the public); AR 1499–503 (documenting advantages of political prediction markets over polls).

The Order makes no effort to engage with this evidence or explain why it is irrelevant to the public interest. Instead, it dismisses out of hand “assertions ... that market-based alternatives tend to be more accurate than polling or other methods of predicting election[s],” without questioning the factual basis of those claims. Order at 21. Once more, the CFTC did not merely err in weighing the evidence—it ignored it altogether. The APA forbids that. *See Carlson*, 938 F.3d at 344.

C. The CFTC Rested on Implausible, Unsubstantiated Speculation About Election Integrity.

For the reasons above, the Commission engaged in arbitrary and capricious reasoning when analyzing the *benefits* of the Congressional Control Contracts. But it also violated the APA’s requirements in identifying their supposed *harms*. The CFTC deemed Kalshi’s contracts a threat to the “ideals of democracy and the sanctity of the electoral process.” Order at 19. Rhetoric aside, the Order gives two main reasons why Kalshi’s contracts would threaten election integrity: A market in election contracts would supposedly (1) spark electoral manipulation and misinformation; and (2) force the CFTC to play “election cop.” The Order fails to substantiate either aspect of this parade of horrors, and it ignores the contrary evidence.

First, the Order claims that Congressional Control Contracts would incentivize manipulation of elections, including by spreading misinformation. Yet the Order provides no real-world examples of market-induced manipulation, despite the long history of political prediction markets in the United States and other democracies. *See* AR 1528 (noting that “the U.S. allowed such markets for many years and the U.K. still does,” yet “[n]o one questions the legitimacy of Margaret Thatcher or Tony Blair because people bet money on the outcome”). To the contrary, research in the record shows that the “likelihood of this kind of manipulation occurring is extremely remote.” AR 1448; *see also* AR 1429–31.

Indeed, if anything, listing the contracts on federally regulated exchanges like Kalshi’s would *ameliorate* manipulation concerns associated with unregulated and offshore markets.¹⁷ And the neutral, market-driven data generated by a regulated exchange is the best way to *mitigate* the threats of misinformation, including from the fake polls that the CFTC purports to worry about (Order at 22). Again, that is what the record shows. *See* AR 1745 (“Real-world data repeatedly emphasizes the superior forecasting accuracy of prediction markets to polls and pundits.”); AR 1576–77 (similar).

¹⁷ *See, e.g.*, AR 1402 (discussing how a regulated exchange like Kalshi’s is “in a better position to police the manipulation of markets by insider trading than the unregulated offshore exchanges (such as Polymarket) that currently serve as liquid exchanges that host a significant share of these trades” and “[b]ringing these trades onto federally regulated markets would mitigate the issues that the Commission is expressing concern over”); AR 1475 (“With a transparent order book it is very easy to see if someone is attempting to manipulate a market, immediately mitigating the impact of any short-lived price manipulation.”).

The CFTC ignored all this evidence, instead musing that Kalshi's contracts could "creat[e] monetary incentives to vote for particular candidates, even when such votes may be contrary to a voter's ... political preferences or views of such candidates." Order at 19–20. But that "speculation," with no foundation in the record, cannot replace "examination of the relevant data and reasoned analysis." *Horsehead Res. Dev. Co. v. Browner*, 16 F.3d 1246, 1269 (D.C. Cir. 1994).

Nor is it credible: Would a voter really vote for a candidate he *opposes* in a ploy to influence an outcome contingent on *dozens* of federal elections? *See* AR 1430 (concern that voters will "steal votes from themselves" is "speculative, abstract, and almost entirely absent from our experience with political prediction markets"). More fundamentally, the notion that a market in Kalshi's contracts would meaningfully alter incentives to manipulate elections or to distribute misinformation is utterly implausible: Given the enormous consequences of election outcomes, the massive sums already spent by political campaigns, and the sheer volume of inputs to the national political discourse, Kalshi's contracts would, at most, be a drop in the bucket. *See, e.g.*, AR 1528 ("implausible that anyone" buying these contracts would have enough "incentive" to "somehow then flip an election through concerted effort"); AR 1449 (concluding "that this election market almost certainly produces no additional manipulation risk relative to those produced by already existing markets"); AR 1577 ("concerns that a contract like Kalshi's might be used for manipulative purposes are easily exaggerated"); *see also* AR 3007–08 (collecting other sources).

Second, there is no reason to think the CFTC would need to anoint itself “election cop” if it permitted Kalshi’s contracts. Order at 23. The Commission fretted that approving these contracts might one day force it to “investigat[e] election-related activities—potentially including the outcome of an election itself.” *Id.* at 22. That suggestion is frankly absurd. The CFTC regulates countless derivatives markets involving commodities over which it lacks independent expertise or authority. For example, while the Commission oversees trading in futures contracts on the S&P 500, it does not regulate stocks; that is the job of the Securities and Exchange Commission, which the CFTC relies on to police the underlying market. Likewise, while the CFTC supervises trading on derivatives based on GDP data, it is the Federal Reserve that has responsibility for producing and ensuring the integrity of that data. *See, e.g.*, AR 2793–94. By the same token, the Federal Election Commission and many other state and federal regulators already shoulder the critical responsibility of ensuring that our elections are fair and secure. Event contracts based on political outcomes would not change that, or thrust this role onto the CFTC. The Order certainly provides no non-speculative reason for concluding otherwise. It arbitrarily—and irresponsibly—stokes fear about the integrity of elections without any basis in the record.

* * *

The Commission had no statutory authority to subject Kalshi’s contracts to a public-interest inquiry in the first place. Regardless, its efforts to undertake one only violated the law yet again—by dismissing benefits that the record established while speculating about harms that the record refuted.

CONCLUSION

For any and all of these reasons, this Court should grant Kalshi's motion for summary judgment, vacate the CFTC's Order, and declare that Kalshi is entitled to list the Congressional Control Contracts for trading.

Dated: January 25, 2024

Respectfully submitted,

Amanda K. Rice
(D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue,
Suite 2100
Detroit, MI 48226
(313) 733-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

/s/ Jacob (Yaakov) M. Roth
Jacob (Yaakov) M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar
90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

*Counsel for Plaintiff
KalshiEx LLC*

*admitted *pro hac vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Action No. 1:23-cv-03257 (JMC)

**Defendant Commodity Futures Trading Commission's Reply
in Support of its Cross-Motion for Summary Judgment**

Defendant Commodity Futures Trading Commission submits this Reply in Support of its Cross-Motion for Summary Judgment, Dkt. No. 30. A memorandum of points and authorities is attached.

Dated: April 10, 2024

Respectfully submitted,

/s/ Raagnee Beri

Raagnee Beri

Senior Assistant General Counsel

Robert A. Schwartz

General Counsel

Anne W. Stukes

Deputy General Counsel

Margaret Aisenbrey

Senior Assistant General Counsel

Conor Daly

Counsel

Commodity Futures Trading Commission

1155 21st Street, NW

Washington, D.C. 20581-0001

Phone: (202) 834-9752

rberi@cftc.gov

TABLE OF CONENTS

INTRODUCTION 1

ARGUMENT 2

I. The Commission articulated the correct meaning of involve..... 2

 A. Kalshi’s argument that “involve” refers to a contract’s “underlying” ignores the plain language of Section 5c(c)(5)(C)(i), and is not supported by statutory context. 2

 B. The Commission’s interpretation of “involve” reflects the broad authority provided by Congress in Section 5c(c)(5)(C) 6

II. The Commission correctly determined that the Contracts involved gaming and activity unlawful under state law..... 8

 A. The Commission correctly determined that the Congressional Control Contracts involve gaming. 8

 B. The contracts or transactions involve activity that is unlawful under State law. 13

III. The Commission’s public interest determination was not arbitrary or capricious. 16

 A. The Commission’s determination under the economic purpose test was not arbitrary and capricious..... 16

 B. The CEA has no specific factor the Commission must consider. 20

 C. The Commission’s determination on election integrity provided a reasoned analysis and the Commission did not refuse to consider evidence. 20

CONCLUSION 22

TABLE OF AUTHORITIES

Cases

AFL-CIO v. Chao,
409 F.3d 377 (D.C. Cir. 2005)17

**Ali v. Fed. Bureau of Prisons*,
552 U.S. 214 (2008) 7, 14

Am. Coal Co. v. Fed. Mine Safety & Health Rev. Comm’n,
796 F.3d 18 (D.C. Cir. 2015)11

Bankamerica Corp. v. United States,
462 U.S. 122 (1983)4

Barnhart v. Sigmon Coal Co.,
534 U.S. 438 (2002)3

Bd. of Cty. Comm’rs v. U.S. Dep’t of Transp.,
955 F.3d 96 (D.C. Cir. 2020)18

**Bostock v. Clayton Cty.*,
590 U.S. 644 (2020) 13, 14

Butte Cty. v. Hogan,
613 F.3d 190 (D.C. Cir. 2010)16

Chamber of Commerce of U.S. v. SEC,
412 F.3d 133 (D.C. Cir. 2005)22

Chevron U.S.A. v. Nat. Res. Def. Counsel,
467 U.S. 837 (1984)11

Citadel Secs. LLC v. SEC,
45 F.4th 27 (D.C. Cir. 2022)18

Clark Cty. v. FAA,
522 F.3d 437 (D.C. Cir. 2008)16

Clark v. Martinez,
543 U.S. 371 (2005)4

Cooper Distrib. Co. v. Amana Refrig. Inc.,
63 F.3d 262 (3d Cir. 1995)10

Fort Stewart Schs. v. FLRA,
495 U.S. 641 (1990)7

Getty v. Fed. Sav. & Loan Ins. Corp.,
805 F.2d 1050 (D.C. Cir. 1986)20

In re Betcorp Ltd.,
400 B.R. 266 (Bankr. D. Nev. 2009).....9

Indep. U.S. Tanker Owners Comm. v. Lewis,
690 F.2d 908 (D.C. Cir. 1982)19

Inv. Co. Inst. v. CFTC,
720 F.3d 370 (D.C. Cir. 2013)17

Kawashima v. Holder,
565 U.S. 478 (2012) 6, 7

Leist v. Simplot,
638 F.2d 283 (2d Cir. 1980)15

Lindeen v. SEC,
825 F.3d 646 (D.C. Cir. 2016)11

Mery Hosp., Inc. v. Azar,
891 F.3d 1062 (D.C. Cir. 2018)12

Michigan v. Bay Mills Indian Cmty.,
572 U.S. 782 (2014)9

Nasdaq Stock Mkt. LLC v. SEC,
38 F.4th 1126 (D.C. Cir. 2022)..... 16, 21

Nat’l Bank of Commerce v. Estate of Ripley,
161 Mo. 126 (1901)7

Nat’l Cable & Telecomms. Ass’n v. FCC,
567 F.3d 659 (D.C. Cir. 2009)11

**Phoenix Herpetological Society v. U.S. Fish and Wildlife Serv.*,
998 F.3d 999 (D.C. Cir. 2021) 19, 21

Pulsifer v. United States,
144 S. Ct. 718 (2024).....4

RadLAX Gateway Hotel, LLC v. Amalgamated Bank,
566 U.S. 639 (2012)11

Reno v. Bossier Par. Sch. Bd.,
528 U.S. 320 (2000)4

<i>Roschen v. Ward</i> , 279 U.S. 337 (1929)	3
<i>Rural Cellular Ass’n v. FCC</i> , 588 F.3d 1095 (D.C. Cir. 2009)	20
<i>State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983)	16
<i>Stilwell v. Office of Thrift Supervision</i> , 569 F.3d 514 (D.C. Cir. 2009)	21
<i>Sv. Airlines Co. v. Transp. Sec. Admin.</i> , 650 F.3d 752 (D.C. Cir. 2011)	17
<i>Thrifty Oil v. Bank of Am. Nat’l Trust and Sav. Ass’n</i> , 322 F.3d 1039 (9th Cir. 2003)	13
<i>United States v. Gonzales</i> , 520 U.S. 1 (1997)	14
<i>United States v. Gould</i> , 30 F.4th 538 (6th Cir. 2022)	6
<i>United States v. King</i> , 325 F.3d 110 (2d Cir. 2003)	6
<i>United States v. Mead</i> , 533 U.S. 218 (2001)	11
<i>United States v. Philip Morris USA Inc.</i> , 566 F.3d 1095 (D.C. Cir. 2009)	10
<i>United States v. Scheels</i> , 846 F.3d 1341 (11th Cir. 2017)	5
<i>Wisconsin Dep’t of Revenue v. William Wrigley, Jr., Co.</i> , 505 U.S. 214 (1992)	4
 Statutes, Rules and Regulations	
17 C.F.R. pt. 32	5
17 C.F.R. pt. 33	5
25 C.F.R. § 502.4	10

26 U.S.C. § 7201.....7
 28 U.S.C. § 2703.....9
 57 Fed. Reg. 12382-01 (Apr. 9, 1992)10
 7 U.S.C. § 2(a)(1)15
 7 U.S.C. § 519
 7 U.S.C. § 5c(c)(5)(C).....passim
 7 U.S.C. §5c(c)(5)(C)(i) 2, 3, 5
 7 U.S.C. § 6c(b)5
 7 U.S.C. 7a-2(c)6
 7 U.S.C. § 7a-2(c)(5)(C) 2, 13
 7 U.S.C. § 13a-2.....15
 Del. Code Ann. tit. 11, § 1403(1).....12
 Fla. Stat. § 849.1412
 N.J. Stat. § 19:34-2414
 Nev. Rev. Stat. § 293.830;.....14

Other Authorities

156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010) 9, 11
 2A C. SINGER, SUTHERLAND ON STATUTORY CONSTRUCTION § 47.17 (7th ed. 2023)7
 CFTC, *CFTC Issues Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts* (Apr. 2, 2012), <https://www.cftc.gov/PressRoom/PressReleases/6224-12>.....17
Contest, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/contest> (last visited Apr. 10, 2024).....11
Contest, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/contest#dictionary-entry-2> (last visited Apr. 10, 2024)12
Contest, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/contest> (last visited Apr. 10, 2024).....11
Gaming, BLACK’S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/gaming/>9
Gaming, DICTIONARY.COM, <https://www.dictionary.com/browse/gaming>9
Gaming, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/gaming>8
 Illinois Gaming Board, <https://www.igb.illinois.gov/> (last visited Apr. 10, 2024)9
 Nevada Gaming Commission and Nevada Gaming Control Board, <https://gaming.nv.gov/> (last visited Apr. 10, 2024).....9

New York State Gaming Commission, <https://www.gaming.ny.gov/> (last visited Apr. 10, 2024).....9
Press, Kalshi, <https://kalshi.com/blog/press> (last visited Apr. 10, 2024)1

INTRODUCTION

The Commodity Exchange Act (“CEA”) grants the Commodity Futures Trading Commission (“Commission”) broad discretionary authority to determine whether certain agreements, contracts, or transactions that “involve” activities enumerated in Section 5c(c)(5)(C) are contrary to the public interest. Applying the statute’s plain meaning, the Commission found that the Congressional Control Contracts (“Contracts”) were agreements, contracts, or transactions that involve two enumerated categories, “activity that is unlawful under ... State law” and “gaming.”

After the Commission determined the Contracts involved “activity that is unlawful under ... State law” and “gaming,” the Commission considered whether the Contracts were contrary to the public interest. In so doing, the Commission considered the Contracts’ economic purpose and, based on the evidence before it and using its expertise, determined the Contracts would not be used for hedging on more than an occasional basis. The Commission further found that, while Kalshi and some commenters argued the Contracts would serve as a check on misinformation, research indicated that election markets may nonetheless incentivize “fake” or unreliable information, and thus impact either election integrity or the public perception of election integrity. The Commission considered that this, in turn, would require the Commission to investigate election-related activities, including potentially the outcome of an election itself, and noted the “very serious concerns” expressed by members of Congress that “assuming the role of an ‘election cop’” may not align with the CFTC’s historic mission and mandate. The Commission therefore reasonably determined the Contracts were contrary to the public interest.

Kalshi now asks this Court to overturn the Commission’s reasoned decision and order that these “election betting” contracts¹ be listed on a federally regulated futures exchange, based on a

¹ *Press*, Kalshi, <https://kalshi.com/blog/press> (last visited Apr. 10, 2024).

plainly mistaken interpretation of Section 5c(c)(5)(C), artificial and narrow definitions of “involve” and “gaming,” and a flawed understanding of “activity that is unlawful under state law.” None of Kalshi’s arguments demonstrates that the Commission was arbitrary and capricious or exceeded its authority in any way. Rather, the Commission employed the ordinary meaning of the broad terms of the statute to determine that the Contracts were precisely the sort of event contracts that Congress empowered the Commission to prohibit.

Kalshi’s attacks on the Commission’s reasoned judgment in determining that the Contracts were contrary to the public interest further fall flat. Despite the broad discretion Section 5c(c)(5)(C) affords the Commission in making a public interest determination, and the deference due to an agency’s expertise, Kalshi protests the Commission’s weighing of the public interest considerations. However, as reflected in the Order, the Commission engaged in a reasoned analysis using its expertise and discretion, considered the evidence before it, and evaluated the appropriate factors to arrive at a sound determination that Kalshi’s Contracts were contrary to public interest. This Court should, accordingly, affirm the Commission’s Order.

ARGUMENT

I. The Commission articulated the correct meaning of involve.

A. Kalshi’s argument that “involve” refers to a contract’s “underlying” ignores the plain language of Section 5c(c)(5)(C)(i), and is not supported by statutory context.

Section 5c(c)(5)(C)(i) authorizes the Commission to determine whether an event contract is contrary to public interest and therefore prohibited from listing, trading, and clearing in Commission-regulated markets if the “agreements, contracts, or transactions *involve*” certain enumerated activities, including “gaming” or “activity that is unlawful under ... State law.” 7 U.S.C. § 7a-2(c)(5)(C) (emphasis added). Despite this plain language, Kalshi insists that the statute applies only where “a contract’s *event*” “involves” the activities enumerated in the statute. Kalshi Reply at 4

(arguing that “involve” “refer[s] to the [contract’s] underlying event”); *see also* Kalshi Reply at 6 n.2. Thus, statutory text aside, Kalshi contends that the Commission should not have asked whether the “agreement, contracts, or transactions involve” an enumerated activity, but only whether elections (the Contracts’ underlying event) involve an enumerated activity. Building on its argument that “involve” is “event-based,” Kalshi contends that it is insufficient “for trading a contract to relate to an enumerated activity.” Kalshi Reply at 6.

Kalshi’s problem is that Section 5c(c)(5)(C)(i) says it *is* sufficient. It applies where “the agreements, contracts, *or transactions* involve” an enumerated activity. Thus, the Commission correctly invoked Section 5c(c)(5)(C)(i) here because “taking a position in the Congressional Control Contracts,” *i.e.*, trading or transacting in them, amounts to gaming and to activity that is unlawful under State law. AR 10. The analysis is similar if the focus is on the “contracts” themselves rather than “transactions” in them. Because it is the “contracts” (and not just the underlying) that may “involve” the enumerated activity, the Commission properly examined the Contracts “as a whole.” AR 7. As the Commission correctly explained, the Contracts “involve” gaming because that is what they are for—gaming is an “essential feature or consequence” of them. AR 13 n.28. Either way, Kalshi’s interpretation violates the statutory text.

Kalshi’s reliance on the “consistent-meaning canon” is misguided. As a threshold matter, canons of statutory interpretation cannot be used to overcome a statute’s plain meaning. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461 (2002) (“Our role is to interpret the language of the statute enacted by Congress. This statute does not contain conflicting provisions or ambiguous language.”); *see generally Roschen v. Ward*, 279 U.S. 337, 339 (1929) (Holmes, J.) (“[I]here is no canon against using common sense in construing laws as saying what they obviously mean.”). But in any event, nothing about the “consistent-meaning canon” justifies Kalshi’s insistence that “involve” refers narrowly to a contract’s “underlying,” rather than the “agreement, contract, or transaction” as a whole, which is

what the statute says. Kalshi Reply at 4, 6-7. The presumption of consistent usage means that “[i]n a given statute, the same term usually has the same meaning.” *Pulsifer v. United States*, 144 S. Ct. 718, 735 (2024). It operates so as to prevent “attribut[ing] different meanings to the same phrase in the same sentence depending on which object it is modifying.” *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 329 (2000); *Bankamerica Corp. v. United States*, 462 U.S. 122, 129 (1983).² Here, the meaning of “involve” does not change depending on the activity—the activities are different from one another, and agreements, contracts, and transactions take different forms. It is unsurprising that the nexus between the contract and activity can manifest in different ways. Kalshi’s argument suggests that the Court must narrow the meaning of “involve” so that only one type of connection qualifies; but the presumption requires only that language in the same statute be accorded a consistent meaning, *Wisconsin Dep’t of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 225 (1992), not the narrowest common denominator. If Congress intended to apply Section 5c(c)(5)(C)(i) only where “the underlying event involves” an activity, rather than more broadly when the “agreements, contracts, or transactions involve” the activity, it would have said so.

² Kalshi does attempt to use precedent for its argument that a term must apply “without differentiation” to a set of defined categories. The cited cases, however, are easily distinguished when, as here, the Commission is simply using the same broad definition across all categories. *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (holding the government could not detain an individual indefinitely if they were deemed inadmissible and removable under one subsection when they could only detain an individual for a limited time for purposes of removal under another subsection); *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 329 (2000) (stating that under Section 5 of the Voting Rights Act “abridging the right to vote on account of race or color” means retrogression, and therefore Section 5 does not extend to a proposed change that did not have a purpose of retrogression, even if it had a purpose of discrimination); *Bankamerica Corp v. US*, 462 U.S. 122, 129 (1983) (holding that the Clayton Act’s prohibition on corporations with interlocking boards prevented persons to be on two or more boards of corporations “other than banks ... or common carriers” must mean none of which is a bank given the government conceded it meant none of which is a common carrier).

The Commission’s Order accords “involve” consistent meaning within Section 5c(c)(5)(C)(i) and across the CEA.³ The Commission determined that for purposes of Section 5c(c)(5)(C)(i), the broad ordinary meaning of “involve” applies so as to “capture both contracts whose underlying is one of the enumerated activities, and contracts with a different connection to one of the enumerated activities because, for example, they ‘relate closely’ to, ‘entail,’ or ‘have as an essential feature or consequence’ one of the enumerated activities.” AR 7. The Commission did not, as Kalshi contends, “assign two meanings” by “conced[ing]” that “involve” “refers to a contract’s underlying event for most of [Section 5c(c)(5)(C)(i)]’s enumerated activities” but finding that involve refers to “the act of trading for the ‘gaming’ and ‘unlawful activity’ categories.” Kalshi Reply at 4 and 6.

The Commission’s application of the ordinary broad meaning of “involve” was appropriate and does not amount to inconsistent usage. Courts have confirmed that “involve” has an expansive connotation when used in federal statutes. *See United States v. Scheels*, 846 F.3d 1341, 1342 (11th Cir. 2017) (recognizing that ‘the ordinary meaning of ‘involve’ when used as a verb is ‘to have as a necessary feature or consequence; entail’ ... or ‘to have within or as part of itself’); *United States v.*

³ Kalshi suggests the Commission has conceded that “involve” means the contract’s “underlying” in other provisions of the CEA, but that mischaracterizes the Commission’s position. The Commission has not taken the position that “involve” in other sections of the CEA is interpreted to mean *only* the underlying. Rather, the Commission noted that “involve” is used throughout the CEA to *include* the underlying but is not *limited* to the underlying. For instance, CEA Section 4c(b), 7 U.S.C. § 6c(b) grants the Commission jurisdiction over both options on commodities (where the relevant commodity would be the underlying) and options on commodity futures (where the relevant futures contract would be the underlying, and the commodity itself would have a different relationship to the transaction). *See* 17 C.F.R. pt. 32 (Regulation of Commodity Options Transactions), pt. 33 (Regulation of Commodity Option Transactions that are Options on Contracts of Sale of a Commodity for Future Delivery). Thus, the provision that refers to “any transaction involving any commodity” is referring both to transactions where the commodity is the underlying *and* to transactions where the *future* (and not the commodity), is the underlying. Thus, as in Section 5c(c)(5)(C)(i), “involve” *includes* the underlying, but is not limited to solely the underlying. That is to say, even if one can find an example where the context restricts “involve” to the underlying, that has no bearing on some other context where by the ordinary meaning of the word it can refer to multiple aspects of the contract.

Gould, 30 F.4th 538, 545 (6th Cir. 2022) (noting that “[c]ircuit courts have repeatedly held ... that the term ‘involve’ is expansive”) (collecting cases). Courts also recognize that “involve” can capture the terms that it modifies in more than one way. *See United States v. King*, 325 F.3d 110, 113 (2d Cir. 2003) (finding sentencing enhancement for “serious drug offense” “*involving* manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance” applied to attempted drug offenses because “involvement” extends inquiry beyond precise crimes); *Kawashima v. Holder*, 565 U.S. 478, 483-84 (2012) (rejecting petitioners’ challenge to deportation for commission of crimes that “involved fraud or deceit” on grounds that respective crimes did not include formal elements of fraud or deceit, because “involve” broadly captured “offenses with elements that necessarily entail fraudulent or deceitful conduct.”). By contrast, Kalshi does not cite a single case that says that when “involve” modifies a set of statutory terms, it can only mean one kind of connection to those terms.

B. The Commission’s interpretation of “involve” reflects the broad authority provided by Congress in Section 5c(c)(5)(C).

Kalshi protests that the Commission’s interpretation “reduce[s] multiple statutory terms to surplusage,” claiming that the “basic principles of statutory construction confirm that ‘involve’ here must refer to the underlying event, lest every event contract be subjected to public-interest scrutiny even after Congress specifically repealed that regime and curtailed the Commission’s review authority.” However, it is not surprising that a broadly worded statute enacted by Congress naturally features overlap between the enumerated categories, especially given the deference provided to the Commission to scrutinize event contracts potentially contrary to the public interest.

Moreover, Kalshi’s overly-restrictive “is” or “closely relates to” definition of “involve” suffers the same supposed problem because, under this definition, the first enumerated category “(I) activity that is unlawful under any Federal or State law;” would swallow at least two other categories: “(II) terrorism;” and “(III) assassination.” 7 U.S.C. 7a-2(c). However, Congress placed

“activity that is unlawful under any Federal or State law”—a very broadly worded category—*first*. Only after this broad formulation did Congress enumerate (II) terrorism, (III) assassination, (IV) war, and (V) gaming, and finally, (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest. Even if the general words in the statute are rendered partially redundant, this fits the natural construction and accords with the doctrine of *eiusdem generis*. See 2A C. SINGER, SUTHERLAND ON STATUTORY CONSTRUCTION § 47.17 (7th ed. 2023) (*eiusdem generis*) (“If, on the other hand, the series of specific words is given its full and natural meaning, the general words are partially redundant. The rule ‘accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.’”) (quoting *Nat’l Bank of Commerce v. Estate of Ripley*, 161 Mo. 126, 131 (1901)). Moreover, Congress may have included the enumerated categories, even if technically unnecessary, “to remove any doubt” these categories were included. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227-28 (2008) (“In any event, we do not woodenly apply limiting principles every time Congress includes a specific example along with a general phrase.”); see *Fort Stewart Schs. v. FLRA*, 495 U.S. 641, 646 (1990) (noting that “technically unnecessary” examples may have been “inserted out of an abundance of caution”); *Kawashima*, 565 U.S. at 487 (“We disagree with the Kawashimas’ contention that the specific mention of one type of tax crime in Clause (ii) impliedly limits the scope of Clause (i)’s plain language, which extends to any offense that “involves fraud or deceit.” We think it more likely that Congress specifically included tax evasion offenses under 26 U.S.C. § 7201 in Clause (ii) to remove any doubt that tax evasion qualifies as an aggravated felony.”).

II. The Commission correctly determined that the Contracts involved gaming and activity unlawful under state law.

A. The Commission correctly determined that the Congressional Control Contracts involve gaming.

Kalshi's Reply fails to show that the Commission unreasonably determined that the Congressional Control Contracts involve "gaming" for purposes of CEA Section 5c(c)(5)(C) by applying the ordinary meaning of "gaming" to "include[] betting or wagering on elections." Kalshi does not contest that wagering or betting on the outcomes of elections is "gambling," or that taking a position in their Contracts means betting on the outcomes of elections. Indeed, they tout their proposed market as "Election Gambling," "Political Betting," "election betting," and an "Election-Betting Market."⁴ Instead, Kalshi attempts to distinguish "gambling" from "gaming," and then argues that the Contracts do not involve "gaming" under its definition because elections are not games. Kalshi's argument defies common usage of the term "gaming," and ignores dictionary definitions and congressional intent, all of which demonstrate that the terms are interchangeable generally, and for purposes of Section 5c(c)(5)(C).

1. "Gaming" and "gambling" are interchangeable terms.

Kalshi first repeats its argument that "gaming" and "gambling" are not interchangeable terms and that, therefore, the Commission incorrectly referred to definitions of "gambling" in interpreting "gaming" as including "staking something of value upon the outcome of a contest of others." Kalshi Reply at 14. Specifically, Kalshi claims, without support from any authority, that "gaming" is a subset of "gambling," the latter of which includes more than just "gaming." Kalshi also insists, again without support, that the terms ordinarily have different meanings. By contrast,

⁴ *Press*, Kalshi, <https://kalshi.com/blog/press> (last visited Apr. 10, 2024).

the Commission set forth in support of its application of “gaming” both dictionary definitions⁵ and caselaw⁶ that show that the terms are interchangeable and carry the same meaning (CFTC Motion at 28-29; Order at 8 n.21). The Commission also cited the statute’s legislative history, in which Senators Feinstein and Lincoln confirmed in a colloquy that the “gaming” provision is intended “*to prevent . . . gambling through futures markets*” and “*derivatives contracts*” that “*exist predominately to enable gambling.*” 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010) (emphasis added). Notably, many state agencies that regulate gambling are known as “gaming” commissions. *See, e.g.*, Nevada Gaming Commission and Nevada Gaming Control Board, <https://gaming.nv.gov/> (last visited Apr. 10, 2024); New York State Gaming Commission, <https://www.gaming.ny.gov/> (last visited Apr. 10, 2024); Illinois Gaming Board, <https://www.igb.illinois.gov/> (last visited Apr. 10, 2024). Kalshi simply ignores all of this.

Kalshi next insists that “gaming” has a specific meaning that limits it to “games,” including “playing games of chance for money” or “betting on games, including sporting events.” But this narrow interpretation lacks any significant support, and Kalshi fails to provide any dictionary definition that interprets “gaming” in this limited way, and to the exclusion of “gambling.”⁷

Kalshi relies only on the definitions of the three classes of gaming under the Indian Gaming Regulatory Act (“IGRA”) in 28 U.S.C. § 2703 to support its interpretation. Acknowledging that the

⁵ *See Gaming*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/gaming> (defining the noun “gaming” as “the practice or activity of playing games for stakes: gambling”); *Gaming*, DICTIONARY.COM, <https://www.dictionary.com/browse/gaming> (defining “gaming” as “gambling”); *Gaming*, BLACK’S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/gaming/> (defining gaming as “gambling” and “an agreement between two or more to risk money on a contest or chance of any kind”).

⁶ *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 792 (2014) (“The ‘gaming activit[y]’ is (once again) the gambling.”); *see also In re Betcorp Ltd.*, 400 B.R. 266, 271 n.3 (Bankr. D. Nev. 2009) (“‘Gaming’ is generally regarded as a mild euphemism for gambling.”).

⁷ Kalshi claims in its Reply that “[d]ictionary definitions and common usage alike confirm that gaming—unlike the broader terms ‘gambling’ or ‘wagering’—typically requires a predicate game.

IGRA’s “class III gaming” is a catchall category that only defines “gaming” as all gaming activities not listed in classes I or II, Kalshi turns to a regulation to argue that class III gaming is limited to activities such as blackjack, slot machines, and sports betting under the IGRA. 25 C.F.R. § 502.4. That citation is unpersuasive for two reasons. First, it is the Department of the Interior’s National Indian Gaming Commission’s description by regulation of gaming activities, and not Congress’s definition of gaming. *See generally Definitions Under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382-01 (Apr. 9, 1992). The regulation, therefore, does not provide insight into Congress’s interpretation of “gaming.” Second, the regulation on its face does not limit “gaming” to “games” because it is non-exhaustive: class III gaming includes “all forms of gaming . . . including *but not limited to*” the listed activities listed. 25 C.F.R. § 502.4 (emphasis added); *see United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1115 (D.C. Cir. 2009) (noting that “the phrase ‘including, but not limited to’ . . . indicate[s] a non-exhaustive list”); *Cooper Distrib. Co. v. Amana Refrig. Inc.*, 63 F.3d 262, 280 (3d Cir. 1995) (Alito, J.) (discussing the phrase “including, but not limited to”). Therefore, the list of gaming activities provided in the regulation are not exhaustive and does not exclude wagering or betting on the outcomes of elections.

2. The Commission’s interpretation of “gaming” is neither too broad nor too narrow.

Kalshi next contends that the ordinary meaning of “gambling” is too broad because it would cover bets on all contingent events. In this regard, Kalshi critiques the Commission’s interpretation of “gaming” as contrived (or, as Kalshi puts it, “gerrymandered”) to avoid covering all event contracts. But the question before the Commission was whether *Kalshi’s* proposed Contracts involved gaming, not other contracts. Because transacting in these Contracts so clearly falls within

Kalshi Br. 25–26.” Kalshi Reply at 14. However, Kalshi fails to provide any of the allegedly supportive dictionary definitions in its Reply or in the portion of its Motion that it cites.

the ordinary meaning of the word “gaming,” the Commission’s decision was neither too narrow nor too broad. Moreover, the Commission’s interpretation is consistent with the basic statutory canon that statutory terms cannot be read in isolation and must also be considered in “the specific context in which th[e] language is used, and the broader context of the statute as a whole.” *Am. Coal Co. v. Fed. Mine Safety & Health Rev. Comm’n*, 796 F.3d 18, 26 (D.C. Cir. 2015) (quoting *Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality opinion)). Thus, the purpose and legislative history of CEA Section 5c(c)(5)(C) also shapes the meaning of the statutory term. See *Lindeen v. SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016). The Commission rightfully did not interpret “gaming” to include bets or wagers on all contingent events; to do so could have rendered the other enumerated categories superfluous. See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 646 (2012) (“[E]ffect shall be given to every clause and part of a statute.”). This was not “an outcome-driven gerrymander,” as Kalshi accuses, but rather, the Commission’s interpretation of the term complies with the “broad, sweeping” authority provided by Congress to “prevent gambling through futures markets” without subjecting every event contract to public interest review under the “gaming” category. See *Nat’l Cable & Telecomms. Ass’n v. FCC*, 567 F.3d 659, 664 (D.C. Cir. 2009); 156 Cong. Rec. S5906; cf. *United States v. Mead*, 533 U.S. 218, 227-28 (2001) (noting “[w]e have long recognized that considerable weight should be accorded to an executive department’s construction of the statutory scheme it is entrusted to administer”) (quoting *Chevron U.S.A. v. Nat. Res. Def. Counsel*, 467 U.S. 837, 844 (1984)).

3. Elections are contests.

Kalshi contends that elections are not “contests” in the context of gambling and, thus, betting on the outcome of an election is not staking something of value upon the outcome of a contest of others. This argument lacks foundation in common sense or parlance. As discussed in the Commission’s Cross-Motion but ignored in Kalshi’s Reply, elections for seats in either chamber

of Congress undoubtedly fall within the ordinary definition of a contest. *See, Contest*, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/contest> (last visited Apr. 10, 2024) (providing the definition, “a struggle or effort to win or get something,” and an example, “the presidential contest”); *Contest*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/contest> (last visited Apr. 10, 2024) (providing the definition, “an attempt, usually against difficulties, to win an election or to get power or control”); *Contest*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/contest#dictionary-entry-2> (last visited Apr. 10, 2024) (providing an example, “She hopes to win the contest for mayor”). Kalshi claims that no legal authority characterizes elections as contests in the context of gambling, despite itself citing state gambling laws that prohibit bets or wagers “upon the result of any . . . contest, wherever conducted, of skill.” Del. Code Ann. tit. 11, § 1403(1); Fla. Stat. § 849.14. This requires Kalshi to take the implausible position that that “[n]o one would classify” an election as a contest of skill. Kalshi Reply at 17. Of course they are – all else equal, the more skilled candidate wins the contest.

Kalshi also contends that the fact that some state statutes separately state that wagering on elections is gambling while also stating that wagering on contests is gambling demonstrates that elections are not contests for the purposes of gambling laws. Kalshi Reply at 17. However, the fact that state gambling statutes have overlap and redundancies between different terms and provisions demonstrates comprehensive regulation, rather than a narrow meaning of terms. *See Mercy Hosp., Inc. v. Azar*, 891 F.3d 1062, 1068 (D.C. Cir. 2018) (noting “overlap may very well exist to make ‘double sure’ that [statutory provisions] remain above the fray of litigation”).

Kalshi adds that Congress could not have considered elections as contests in the context of Section 5c(c)(5)(C) because an “election is not a game” or “staged for entertainment” and has “vast extrinsic and economic consequences.” However, there is no indication that the consequences or

significance of the contest is relevant to whether the wager or bet on the contest is categorized as “gaming” or “gambling.” Kalshi cites Senator Lincoln’s reference to bets on sporting events, such as the Kentucky Derby, as examples of event contracts that fall within the “gaming” category and argues that bets on sporting contests was Congress’s main concern when enacting Section 5c(c)(5)(C). However, a law’s broadly-worded text guides our application of the statute, “rather than the *principal* concerns of our legislators.” See *Bostock v. Clayton Cty.*, 590 U.S. 644, 664 (2020) (quoting *Oncala v. Sundowner Offshore Servs.*, 523 U.S. 75, 59 (1998)) (noting that “unexpected applications of broad language reflect only Congress’s ‘presumed point [to] produce general coverage—not to leave room for courts to recognize ad hoc exceptions’”) (quoting A. SCALIA & B. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 101 (2012)). Accordingly, the Commission was not arbitrary and capricious when it determined that taking a position in the Contracts is “gaming.”

B. The contracts or transactions involve activity that is unlawful under State law.

In enacting Section 5c(c)(5)(C), Congress included a provision that 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.” 7 U.S.C. § 7a-2(c)(5)(C). The Commission determined that the Contracts involved activity that is unlawful under state law because taking a position, or transacting, in the Contracts would be staking something of value, or wagering, upon the outcome of contests between electoral candidates, and many states prohibit wagering on elections. AR 12-13. Kalshi raised to the Commission that any state law prohibiting wagering on elections does not and cannot refer to Commission-regulated event contracts, and the Congressional Control Contracts are therefore not unlawful under state law. The Commission responded that this “misses the point.” AR 13 n.28. The Commission then explained that the relevant state laws here are not the state laws prohibiting

futures trading,⁸ which are expressly preempted by the CEA. Rather, the Commission explained that the category was concerned with the “important state interests expressed in statutes separate and apart from those applicable to trading on a DCM.” AR 13 n.28.

Kalshi continues to argue that “any . . . State law” cannot mean *any* state law because some state laws are subject to federal preemption. However, in this case, the Commission focused on state laws that were *not* preempted by the CEA and that expressed a state interest outside the Commission’s regulatory regime. AR 13 n.28. Here, that interest was betting on elections. AR 12-13. Even states that allow gambling prohibit betting on elections, because the concern is not gambling *per se*, but election integrity. *See, e.g.*, Nev. Rev. Stat. § 293.830; N.J. Stat. § 19:34-24. There is no support for the proposition that exclusive federal jurisdiction over exchange-traded futures means that those state interests must give way to a registered DCM’s desire to run an “Election Gambling” operation on a regulated futures exchange.

Further, when Congress passed the Special Rule, they were aware the CEA would preempt state law, such as bucket shop laws, but they nonetheless stated that the Commission may perform a public interest review of an agreement, contract, or transaction that involved activity that was unlawful under *any* state law. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (“We have previously noted that [r]ead naturally, the word “any” has an expansive meaning, that is, “one or some indiscriminately of whatever kind.””) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). Accordingly, the CEA’s preemption of certain state laws does not preclude the Commission from reviewing event contracts that involve activity that violates state laws that express state interests

⁸ To describe these, the Commission used the term “bucket-shop laws.” AR 13 n.28. The term “bucket shop” refers to an illegitimate gambling operation, common at the end of the nineteenth century, that permitted betting on the market prices of stocks and commodities. The CEA preempts these laws. *See generally Thrifty Oil v. Bank of Am. Nat’l Trust and Sav. Ass’n*, 322 F.3d 1039 (9th Cir. 2003).

separate and apart from those that would be preempted. *See, e.g., Bostock*, 590 U.S. at 658-59 (determining Title VII’s meaning based on the plain meaning of the broad language Congress used and rejecting narrower interpretations because Congress “could have written the law differently”).

Kalshi nevertheless insists that “if the Congressional Control Contracts ‘involve’ unlawful activity because some States prohibit wagering on elections, then every event contract equally ‘involves’ unlawful activity because many States prohibit all wagering on contingencies.” Kalshi Reply at 20. But *that* argument overlooks federal preemption. A state *cannot* prohibit trading all event contracts because, as the Commission observed, CEA Section 2(a)(1) grants the Commission “exclusive jurisdiction” over futures and swaps traded on a DCM, and this preempts the application of state law. AR 13 n.28 (citing 7 U.S.C. § 2(a)(1) and *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980)). So while a state is preempted from outlawing futures trading simply because someone thinks it resembles gambling, it *can* prohibit gambling on elections with no obstacle from the CEA. That is the sense in which Kalshi’s proposal “involves” activity that violates state law, without regard to the CEA’s general preemption. The question for the Commission was whether to *legalize* gambling activity that is prohibited by *unpreempted* state laws, by allowing Kalshi to establish an Election Gambling business on a federally registered DCM. The Commission rationally determined not to.

Kalshi posits that by this reasoning, “but for federal preemption of state law,” trading on any event contract would be unlawful under state laws prohibiting trading on contingencies. Kalshi Reply at 20. However, the Commission’s careful application of the CEA’s preemptive effect is consistent with the structure of the statute as a whole. While Congress has preempted certain state laws, it has also expressly stated the CEA will not interfere with state investigatory power or general civil or criminal antifraud laws, while also empowering the states to use the CEA’s antifraud authority. 7 U.S.C. § 13a-2. Further, the relevant state laws that the Commission focused on in the Order express interests that are separate and apart from laws applicable to trading on a DCM. AR

13 n.28. An inference from both Section 6d (7 U.S.C. § 13a-2) and Section 5c(c)(5)(C) is that Congress did not want to wholly annihilate state interests that may otherwise be subsumed by the CEA. The Commission’s construction effectuates the purpose of the section, the Congressional interest in preserving state interests, and the plain meaning, but does not subject all event contracts to the Commission’s public interest determination.

The Commission’s definitions of “involve,” “gaming,” and its interpretation of “activity that is unlawful under any . . . State law” were all driven by the plain meaning of the statute. Therefore, the Commission was able to exercise its discretion to determine whether the Contracts are contrary to public interest.

III. The Commission’s public interest determination was not arbitrary or capricious.

The Commission engaged in reasoned decision-making and easily met the standard for informal adjudications, even under the cases Kalshi relies on. *Butte Cty. v. Hogan*, 613 F.3d 190, 195 (D.C. Cir. 2010) (stating an agency must provide a statement of reasoning and cannot refuse to consider evidence bearing on the issue); *Clark Cty. v. FAA*, 522 F.3d 437, 441 (D.C. Cir. 2008) (Kavanaugh, J.) (requiring an explanation when the only evidence in the record supported the opposite conclusion). The Commission did not refuse to consider evidence, like in *Butte County*, nor was the agency confronted with only evidence that did not support its decision, like in *Clark County*. Rather, the Commission adequately explained its reasoning, considered the relevant evidence, and demonstrated a “rational connection between the facts found and the choice made.” *Nasdaq Stock Mkt. LLC v. SEC*, 38 F.4th 1126, 1135 (D.C. Cir. 2022) (quoting *Motor Vehicle Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)).

A. The Commission’s determination under the economic purpose test was not arbitrary and capricious.

Kalshi’s opening brief incorrectly characterized the Commission’s Order as requiring “direct economic effects.” Kalshi now attacks the Commission’s brief for not engaging with their straw-

man argument. Apparently, Kalshi views the Commission's role in determining whether the Contracts are in the public interest as deciding if there is *any hedging purpose at all*, and if so, Kalshi seems to argue the Commission must permit them.⁹ But, that is not the statute's structure. The statute gives the Commission discretion to determine whether the Contracts are contrary to the public interest, and because the statute is phrased in such terms, it "fairly exudes deference to the [agency]." *Sw. Airlines Co. v. Transp. Sec. Admin.*, 650 F.3d 752, 756 (D.C. Cir. 2011) (Kavanaugh, J.) (quoting *AFL-CIO v. Chao*, 409 F.3d 377, 393 (D.C. Cir. 2005) (Roberts, J., concurring in part and dissenting in part)). The agency found (i) control of a chamber of Congress itself has no sufficiently direct, predictable, or quantifiable economic consequences; (ii) any eventual effects that Kalshi and commenters cited were diffuse and unpredictable; and (iii) the economics and structure of the transactions limit their utility as a vehicle for hedging. Based on these findings, the agency determined the Contracts could not reasonably be expected to be used for hedging and/or price basing on more than an occasional basis and/or that the Contracts could not reasonably be expected to be used predominantly by market participants having a commercial or hedging interest.¹⁰ AR 19. It need go no farther.

⁹ It indisputable that the Commission has the discretion to prevent a contract with *some* hedging purpose from trading. War and terrorism, for example, may have effects on economic interests that are more predictable than an election's, and for which someone could articulate a mechanism for hedging with on-exchange derivatives, but the Commission may still determine it is contrary to the public interest. As noted in the Order, the Senate colloquy even discussed that the provision would allow the Commission to prevent trading in contracts "that may serve a limited commercial function but threaten the public good." AR 14 n.31.

¹⁰ Kalshi also attacks the Commission's use of the test here, stating that the Commission did not apply the economic purpose test in its decision on the NADEX contracts. CFTC, *CFTC Issues Order Prohibiting North American Derivatives Exchange's Political Event Derivatives Contracts* (Apr. 2, 2012), <https://www.cftc.gov/PressRoom/PressReleases/6224-12>. The NADEX order, a 4-page order, is not at issue here, but nonetheless that order *did* reference the pre-CFMA economic purpose test, though the order did not fully articulate it. Regardless, in the NADEX order, as here, the CFTC found NADEX had not met the economic purpose test, and the contracts were contrary to the public interest. Thus, the agency has not changed course. However, even if it had, it would only need to explain its reasons—and the agency's reasons for its use of the economic purpose test are

Kalshi also posits that because *some* commenters said they would use the contract for hedging—despite hundreds of comments opposing the contracts, many of which equated the contracts to gambling—the Commission *could not* find the expected hedging and/or price basing use is insufficient under the economic purpose test.¹¹ In addition, and notably, throughout Kalshi’s briefs, the record citations often focus on their own unsubstantiated views or those of Aristotle, which serves as a clearing house for trades on the PredictIt Market. *Clarke et al. v. CFTC*, 1:24-cv-00167-JMC, ECF No. 55 at ¶ 38 (D.D.C.). The CFTC cannot rely to the exclusion of others on the “self-serving views of the regulated entity.” *CBOE Futures Exch. v. SEC*, 77 F.4th 971, 979 (D.C. Cir. 2023) (quoting *Susquehanna Int’l Grp v. SEC*, 886 F.3d 442, 447 (D.C. Cir. 2017)) (requiring a “critical review” of the submissions of a securities exchange). Regardless of whether these few comments are sufficient to establish a hedging use at all, the comments do not establish a hedging use that would be more than occasional or that the contracts would not be predominantly used by speculators.

The common sense, predictive judgment that the contracts in the “Election Gambling” market could not be reasonably expected to be used for hedging or price-basing on more than occasional basis is *precisely* the type of determination that is based on “highly complex and technical matters” and is therefore “entitled to great deference.” *Citadel Secs. LLC v. SEC*, 45 F.4th 27, 32 (D.C. Cir. 2022); *see also Bd. of Cty. Comm’rs v. U.S. Dep’t of Transp.*, 955 F.3d 96, 99 (D.C. Cir. 2020) (noting that courts should give agencies “a wide berth when making predictive judgments”). Indeed, due to the nature of the informal adjudication, the Commission’s common sense and predictive

adequately articulated here. *See, e.g., Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 376 (D.C. Cir. 2013) (describing the requirements for a change in agency position as “a low bar”).

¹¹ Kalshi cites one commenter arguing for a hedging purpose that compares the prediction markets to sports betting and casino gambling and stating he uses the prediction markets for income. AR 1539-40.

judgment “*need not be explicitly backed by information in the record,*”¹² and this posture is exactly where the difference between a formal and informal adjudication “should not be underestimated.”¹³ *Phoenix Herpetological Society v. U.S. Fish and Wildlife Serv.*, 998 F.3d 999, 1006 (D.C. Cir. 2021) (noting that in informal adjudications common sense and predictive judgments need not be explicitly backed by information in the record, whereas in formal adjudications, they do).

¹² Nevertheless, the Commission cited plenty of evidence for its judgment, including the economics and structure of the transaction, the evidence of the diffuse and unpredictable effects of partisan control of a chamber of Congress—including the very nature of the process for enacting legislation, and the many variables that affect the actual implementation of public policy, etc. AR 15-17.

¹³ Kalshi argues that the Commission placed on it an “unclear burden to sufficiently prove the extent of its contracts’ economic utility,” which “flips Congress’s framework on its head” because “a contract is presumptively legal unless the Commission determines that the contract is ‘contrary to the public interest.’” Kalshi Reply at 29. The nature of Kalshi’s precise objection is not apparent, but it is certainly not true that the Commission applied a presumption against allowing the Contracts to trade. The Commission did not base its decision on some unmet burden as to the Contracts’ economic purpose. It examined that purpose as something that could have weighed in favor of permitting the Contracts, and in so doing, Commission conducted its own analysis of the Contracts’ economic utility evident from the structure, mechanics, and economics of the Contracts; reviewed public comments and Kalshi’s own submissions regarding economic utility; and relied on its own expertise. The Commission concluded that “it has not been demonstrated that the Congressional Control Contracts could reasonably be expected to be used for hedging and/or price basing on more than an occasional basis or that the Congressional Control Contracts could reasonably be expected to be used predominantly by market participants having a commercial or hedging interest.” AR 19. This does not suggest that the Commission imposed an unclear burden. Kalshi was undoubtedly aware that the Commission would consider economic utility because transactions subject to the CEA “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.” 7 U.S.C. § 5. In this regard, Kalshi included with the 2023 Contract Submission, Appendix C “Risk Mitigation and Price Basing Utilities,” AR 36-60, and later responded to the Commission’s questions for public comment, including those about the Contracts’ potential hedging and price-basing utility. AR 1786-1841; 2669-2757. The Commission owed Kalshi nothing more. *See Indep. U.S. Tanker Owners Comm. v. Lewis*, 690 F.2d 908, 926 (D.C. Cir. 1982) (“An agency is not obliged to publish a tentative opinion for comment.”). And, importantly, the Commission did not disapprove the Contracts simply because they lacked a meaningful economic purpose – it disapproved them in light of that fact and because numerous public-interest factors cut the other way.

B. The CEA has no specific factor the Commission must consider.

Kalshi's argument that the Commission did not "meaningfully engage" with its asserted "extensive informational benefits" crumbles upon examination of the case it cites. Kalshi Reply at 28. In *Getty v. Federal Savings & Loan Insurance Corp.*, the agency was required *statutorily* to consider a specific factor, and the DC Circuit noted: "[w]hen a statute requires agencies to consider particular factors, it imposes upon agencies duties that are essentially procedural The only role for a court is to ensure that the agency has considered the factor." 805 F.2d 1050, 1055 (D.C. Cir. 1986). Section 5c(c)(5)(C) requires the Commission to consider no specific factor in its public interest analysis. The Commission noted that Kalshi and other commenters stated the Contracts would serve as a check on misinformation, but there was also research that such markets may incentivize the creation of unreliable information. AR 21-22. The Commission's decision weighed the competing interests and risks, including the risk of incentivizing misinformation. This is another example of how the Commission had to make a common sense, predictive judgment, based on uncertain future events. *See Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1105 (D.C. Cir. 2009) ("The 'arbitrary and capricious' standard is particularly deferential in matters implicating predictive judgments and interim regulations.").

C. The Commission's determination on election integrity provided a reasoned analysis and the Commission did not refuse to consider evidence.

Kalshi now admits the Commission would be required to investigate manipulative events, and, realizing that its own economists had conceded short-term manipulations would happen, argues that what matters is long-term manipulative events. The Commission's order focused on manipulations, and the CEA does not distinguish between a short and a long-term manipulation.

The Commission’s brief only pointed out that the risk of short-term manipulative events, as admitted by Kalshi’s own economists, *alone* supports the Commission’s order.¹⁴

The Commission does not, and did not, agree there would be no long-term manipulative effects, and the Commission expressed concern about election integrity and perceptions of election integrity. As the Order states, the Contracts create monetary incentives to vote (including as an organized collective) for particular candidates, AR 20, up to \$100,000,000, AR 32-33. Moreover, as the Order stated, the Contracts could incentivize the spread of misinformation¹⁵—and the public interest in guarding against such information is all the more pressing in context of federal election outcomes. AR 20. The Commission “need not suffer the flood before building the levee.” *Stilwell v. Office of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009) (Kavanaugh, J.). Further, contrary to Kalshi’s implication, short-term manipulations could have long-term effects by impacting fundraising, voter turnout efforts, and news stories covering candidates. *See* AR 20, 22. In short, the Commission found itself in the type of situation where it needed to forecast uncertain, future events. In such moments, agencies are allowed to conduct a general analysis based on informed

¹⁴ Kalshi completely misses the point by arguing “that kind of short-term risk exists in *any* derivative,” Kalshi Reply at 30, overlooking one of the bases for the Commission’s Order. The Commission’s Order discussed how the Contracts differ from vast majority of commodities underlying Commission-regulated derivatives—those have informational sources such as weather forecasts, federal government economic data, market-derived supply and demand metrics for commodities, market-based interest rate curves, etc. Contrast those sources to what would underly the Contracts here—not a cash market with bona fide economic transactions—instead, the pricing information would be driven by unregulated informational sources that do not follow scientifically reliable methodologies. AR 21. The Commission noted this difference in price forming information “may increase the risk of manipulative activity relating to the trading and pricing of the contracts, while decreasing Kalshi’s and the Commission’s ability to detect such activity.” AR 21. Again, this is precisely the type of determination, based on informed conjecture, the agency is entitled to conduct. *See Nasdaq Stock Mkt. v. SEC*, 38 F.4th 1126, 1142 (D.C. Cir. 2022); *Phoenix Herpetological Soc’y v. U.S. Fish and Wildlife Serv.*, 998 F.3d 999, 1006 (D.C. Cir. 2021).

¹⁵ Further, as the Commission noted, the Contracts do not exclude all individuals or entities who could have a motivation to create the impression of likely electoral success or failure on the part of a political candidate or candidates. AR 22. Kalshi does not, for instance, exclude agents of foreign powers.

predictions—and it did so here, reasonably. *Nasdaq Stock Mkt. v. SEC*, 38 F.4th 1126, 1142 (D.C. Cir. 2022) (“But an agency ‘need not—indeed cannot—base its every action upon empirical data’ and may, ‘depending on the nature of the problem, . . . be “entitled to conduct . . . a general analysis based on informed conjecture.”’)” (quoting *Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 142 (D.C. Cir. 2005))).

Thus, all that is required here is that, even under Kalshi’s own case law, cited above, the agency provides a statement of reasoning, not refuse to consider evidence with bearing on the issue, and provide a fulsome explanation if the only evidence in the record supports the opposite conclusion. Here, the agency explained its reasoning, engaged with the relevant evidence, and was not confronted with a one-sided record. The Commission considered the Contracts’ proposed economic utility properly using a critical review, the proposed non-economic benefits, and the concerns about election integrity and the perceptions on election integrity, as well as the Commission’s role in policing it, and came to a reasoned judgment. The public interest determination is therefore sound.

CONCLUSION

For the foregoing reasons and those stated in the CFTC’s Cross-Motion for Summary Judgment, the CFTC respectfully requests that this Court grant the Commission’s motion for summary judgment, deny Kalshi’s motion for summary judgment, enter judgment in favor of the CFTC and against Kalshi on all claims, and order any other relief that this Court determines is appropriate.

Dated: April 10, 2024

Respectfully submitted,

/s/ Raagnee Beri

Raagnee Beri

Senior Assistant General Counsel

Robert A. Schwartz

General Counsel

Anne W. Stukes

Deputy General Counsel

Margaret Aisenbrey

Senior Assistant General Counsel

Conor Daly

Counsel

Commodity Futures Trading Commission

1155 21st Street, NW

Washington, D.C. 20581-0001

Phone: (202) 834-9752

rberi@cftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2024, I served the foregoing on counsel of record using this Court's CM/ECF system.

/s/ Raagnee Beri

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Action No. 1:23-cv-03257 (JMC)

Defendant Commodity Futures Trading Commission's Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment

Defendant Commodity Futures Trading Commission files its Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment. A memorandum of points and authorities is attached.

Dated: February 26, 2024

Respectfully submitted,

/s/ Raagnee Beri

Raagnee Beri

Senior Assistant General Counsel

Robert A. Schwartz

General Counsel

Anne W. Stukes

Deputy General Counsel

Margaret P. Aisenbrey

Senior Assistant General Counsel

Conor B. Daly

Counsel

Commodity Futures Trading Commission

1155 21st Street, NW

Washington, D.C. 20581-0001

Phone: (202) 418-5986

rberi@cftc.gov

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT.....	1
THE CFTC AND REGULATORY FRAMEWORK.....	1
A. Brief Introduction to the CFTC, the Commodity Exchange Act, and Derivatives.....	1
B. The Public Interest in Regulated Derivatives Markets: Hedging and Pricing.....	4
C. The CEA’s “Special Rule” for Certain Event Contracts.....	5
D. Prior Application of the “Special Rule” to Political Event Contracts.....	8
AGENCY PROCEEDINGS IN THIS CASE	8
SUMMARY OF ARGUMENT	14
STANDARD OF REVIEW	17
ARGUMENT.....	20
I. The Commission correctly concluded that the Congressional Control Contracts involve both gaming and activity that is unlawful under state law.....	20
A. The Commission did not err in applying the ordinary meaning of “involve.”	20
B. The Commission correctly determined that the Congressional Control Contracts involve gaming.	26
1. The Commission did not construe “gaming” to mean the staking of money on any contingent event.	27
2. The Commission’s interpretation of “gaming” to include betting or wagering on a contest of others is consistent with the ordinary meaning of “gaming.”	28
3. The Commission’s definition of “gaming” is consistent with state and federal gambling statutes.	29
4. The Commission arrived at the best interpretation of “gaming” given the statutory context.	32

- 5. Legislative history supports the Commission’s interpretation of “gaming.”33
- C. The Commission correctly concluded that the Congressional Control Contracts involve activity that is unlawful under state law.....34
- II. The Commission reasonably determined that the Congressional Control Contracts are contrary to public interest.....36
 - A. Kalshi incorrectly relies on rulemaking cases and mischaracterizes the Commission Order in arguing that the Commission’s public interest analysis was arbitrary and capricious.38
 - B. The Commission’s application of the economic purpose test was not arbitrary or capricious.39
 - C. The Commission reasonably determined that the Congressional Control Contracts did not have a sufficient economic purpose for purposes of the CEA.....41
 - D. The Commission was not arbitrary and capricious in addressing comments.....44
 - E. The Commission reasonably determined that the Contracts could potentially be used in ways that would have an adverse effect on election integrity, or the perception of election integrity, and could put the Commission in the position of investigating election-related activities.....45
- CONCLUSION.....52

TABLE OF AUTHORITIES

Cases:	<u>Page(s)</u>
<i>All Party Parliamentary Grp. on Extraordinary Rendition v. U.S. Dep't of Def.</i> , 754 F.3d 1047 (D.C. Cir. 2014)	29
<i>Am. Coal Co. v. Fed. Mine Safety & Health Rev. Comm'n.</i> , 796 F.3d 18 (D.C. Cir. 2015)	32
<i>Am. Min. Cong. v. EPA</i> , 824 F.2d 1177 (D.C. Cir. 1987)	32
<i>Baystate Franklin Med. Ctr. v. Azar</i> , 950 F.3d 84 (D.C. Cir. 2020)	38
<i>Bd. of Cty. Comm'rs v. U.S. Dep't of Transp.</i> , 955 F.3d 96 (D.C. Cir. 2020)	37
<i>Bldg. Owners & Managers Ass'n Int'l v. FCC</i> , 254 F.3d 89 (D.C. Cir. 2001)	23, 33
<i>*CBOE Futures Exch. v. SEC</i> , 77 F.4th 971 (D.C. Cir. 2023)	20, 37, 50
<i>CFTC v. Glen Point Capital Advisors</i> , 1:22-cv-10589, Dkt. 1 (S.D.N.Y. 2022)	3
<i>CFTC v. McAfee</i> , No. 21-cv-1919 (JGK), 2022 WL 3969757 (S.D.N.Y. July 14, 2022)	47
<i>CFTC v. Safeguard Metals, LLC</i> , 2:22-cv-00691, Dkt. No. 201 (C.D. Cal. 2023)	3
<i>CFTC v. Xie</i> , 1:23-cv-01947, Dkt. No. 17, 2023 WL 8532325 (N.D. Ill. 2023)	3
<i>Chamber of Commerce v. SEC</i> , 412 F.3d 133 (D.C. Cir. 2005)	20
<i>*Chevron U.S.A. Inc. v. Natural Res. Def. Council</i> , 467 U.S. 837 (1984)	19
<i>Citizens for Resp. & Ethics in Washington v. FEC</i> , 316 F. Supp. 3d 349 (D.D.C. 2018) 971 F.3d 340 (D.C. Cir. 2020)	17

**City of Arlington v. FCC*,
569 U.S. 290 (2013) 19, 21, 25

Coburn v. McHugh,
679 F.3d 924 (D.C. Cir. 2012)21

**Concert Inv., LLC v. Small Bus. Admin.*,
616 F. Supp. 3d 25 (D.D.C. 2022) 17, 18, 38, 45

Conf. Grp., LLC v. FCC,
720 F.3d 957 (D.C. Cir. 2013)18

Conn. Nat’l Bank v. Germain,
503 U.S. 249 (1992)21

Consumer Elecs. Ass’n v. FCC,
347 F.3d 291 (D.C. Cir. 2003)34

Crooks v. Mabus,
845 F.3d 412 (D.C. Cir. 2016)50

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009)47

FCC v. Nat’l Citizens Comm. for Broad.,
436 U.S. 775 (1978)20

FCC v. Prometheus Radio Project,
592 U.S. 414 (2021)18

Graham Cty. Soil & Water Conservation Dist. v. United States ex rel. Wilson,
559 U.S. 280 (2010)31

In re Betcorp Ltd.,
400 B.R. 266 (Bankr. D. Nev. 2009)29

In re Blockratize,
CFTC No. 22-09, 2022 WL 73864 (Jan. 3, 2022) 3

In re Ceres Global Ag. Corp.,
CFTC No. 24-01, 2023 WL 8650000(Oct. 23, 2023)3

In re JPMorgan Chase & Co.,
CFTC No. 20-69, 2020 WL 5876730 (Sep. 29, 2020)48

In re Polar Bear Endangered Species Act Listing,
 709 F.3d 1 (D.C. Cir. 2013)41

Leist v. Simplot,
 638 F.2d 283 (2d Cir. 1980).....35

Medica Ins. Co. v. Becerra,
 No. 1:22-CV-1440-RCL, 2023 WL 6314571 (D.D.C. Sept. 28, 2023).....17

Menkes v. U.S. DHS,
 637 F.3d 319 (D.C. Cir. 2011).....19

Mery Hosp., Inc. v. Azar,
 891 F.3d 1062 (D.C. Cir. 2018)24

MetLife v. Fin. Stability Oversight Counsel,
 865 F.3d 661 (D.C. Cir. 2017)37

Michigan v. Bay Mills Indian Cmty.,
 572 U.S. 782 (2014)29

**Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*,
 463 U.S. 29 (1983) 18, 20, 37

Nasdaq Stock Market LLC v. SEC,
 38 F.4th 1126 (D.C. Cir. 2022)20

Nat’l Ass’n of Clean Air Agencies v. EPA,
 489 F.3d 1221 (D.C. Cir. 2007)19

Nat’l Cable & Telecomms. Ass’n v. FCC,
 567 F.3d 659 (D.C. Cir. 2009).....32

Neustar, Inc. v. FCC,
 857 F.3d 886 (D.C. Cir. 2017).....18

Nuclear Energy Inst., Inc. v. EPA,
 373 F.3d 1251 (D.C. Cir. 2004)21

Petit v. U.S. Dep’t of Educ.,
 675 F.3d 769 (D.C. Cir. 2012).....33

**Phoenix Herpetological Soc’y, Inc. v. United States Fish & Wildlife Serv.*,
 998 F.3d 999 (D.C. Cir. 2021)..... 19, 46, 48

Pub. Citizen, Inc. v. U.S. HHS,
 332 F.3d 654 (D.C. Cir. 2003).....19

Rural Cellular Ass’n v. FCC,
588 F.3d 1095 (D.C. Cir. 2009)38

Sherley v. Sebelius,
689 F.3d 776 (D.C. Cir. 2012).....45

Stilwell v. Office of Thrift Supervision,
569 F.3d 514 (D.C. Cir. 2009).....47

Sw. Airlines Co. v. Saxon,
596 U.S. 450 (2022)22

Sw. Airlines Co. v. Transp. Sec. Admin.,
650 F.3d 752 (D.C. Cir. 2011)20

Taniguchi v. Kan Pac. Saipan, Ltd.,
566 U.S. 560 (2012)22

Tourus Recs., Inc. v. DEA,
259 F.3d 731 (D.C. Cir. 2001).....51

Truitt v. Kendall,
554 F. Supp. 3d 167 (D.D.C. 2021)17

U.S. Sugar Corp. v. EPA,
830 F.3d 579 (D.C. Cir.)
671 F. App’x 822 (D.C. Cir. 2016)
671 F. App’x 824 (D.C. Cir. 2016).....19

United States v. Alexander,
331 F.3d 116 (D.C. Cir. 2003).....22

United States v. Fischer,
64 F.4th 329 (D.C. Cir. 2023) 31, 34

United States v. King,
325 F.3d 110 (2d Cir. 2003).....22

United States v. McKenney,
450 F.3d 39 (1st Cir. 2006)22

United States v. Wilkinson,
986 F.3d 740 (7th Cir. 2021)6

United States v. Williams,
931 F.3d 570 (7th Cir. 2019)22

United States v. Wilson,
290 F.3d 347 (D.C. Cir. 2002).....32

Verizon v. FCC,
740 F.3d 623 (D.C. Cir. 2014)..... 20, 50

Legislative Materials:

156 Cong. Rec. S5906, 2010 WL 2788026 (daily ed. July 15, 2010) *Passim*

S. Rep. No. 93-1131, 93rd Cong., 2d Sess. 36, 1974 WL 11581 (1974).....5

Statutes:

Commodity Exchange Act:

7 U.S.C. § 1a(19)6

7 U.S.C. § 2(a)(1)(D)(i).....23

7 U.S.C. § 2(e)3

7 U.S.C. § 2(a)(1)35

7 U.S.C. § 2(a)(1)(C)(i)(I)23

7 U.S.C. § 2(a)(1)(C)(ii) 7, 23

7 U.S.C. § 2(a)(1)(C)(iv)23

7 U.S.C. § 5.....4

7 U.S.C. § 5(b).....51

7 U.S.C. § 5(a)-(b).....2

7 U.S.C. § 5(c)(5)(C)(i)-(ii)36

7 U.S.C. § 6.....3

7 U.S.C. § 6a(a)(4)(A).....23

7 U.S.C. § 6c(b)..... 3, 23

7 U.S.C. § 6c(d)(2)(A)(i).....23

7 U.S.C. § 7(d)(3)4

7 U.S.C. § 7(d)(4)4

7 U.S.C. § 7a-2(c)(1)6

7 U.S.C. § 7a-2(c)(4)6

7 U.S.C. § 7a-2(c)(5)5

7 U.S.C. § 7a-2(c)(5)(C) *Passim*

7 U.S.C. § 9.....2

7 U.S.C. § 20(e)23

7 U.S.C. § 25(a)(1)(D)(ii)23

Pub. L. No. 106-554, 114 Stat. 2763 (2000).....5

Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §§ 5361-5367.....3

5 U.S.C. § 70617

25 U.S.C. § 2703(6)32

25 U.S.C. § 2703(7)32

25 U.S.C. § 2703(8)32

720 Ill. Comp. Stat. Ann. 5/28-130

Ala. Code § 13A-12-20(4)30

Ga. Code Ann. § 16-12-21(a)(1)30

Iowa Code § 725.7(1)30

Ky. Rev. Stat. § 528.010(6)(a)31

La. Stat. § 14:90(A)(1)(a)31

Mass. Gen. Laws ch. 23K, § 230

Utah Code Ann. § 76-10-1101(a)31

Regulations:

17 C.F.R. § CFR 5, Appendix A- Guideline No. 1 (repealed 2001)40

Commission Regulations:

 17 C.F.R. § 33.3 3

 17 C.F.R. § 40.2 5, 6, 8

 17 C.F.R. § 40.3 5, 6, 7

 17 C.F.R. § 40.11 *Passim*

Contract Market Designation, 40 Fed. Reg. 25,849 (June 19, 1975)5

Economic and Public Interest Requirements for Contract Market Designation, 40 Fed. Reg. 49,832
(Nov. 3, 1982)40

Economic and Public Interest Requirements for Contract Market Designation, 64 Fed. Reg. 29,217
(June 1, 1999)40

Other Authorities:

BetMGM Ontario,
<https://sports.on.betmgm.ca/en/sports/politics-61> (last visited Feb. 23, 2024)28

BetOnline,
<https://www.betonline.ag/sportsbook/futures-and-props/congress-specials>
 (last visited Feb. 23, 2024).....29

CFTC:

Contracts & Products: Event Contracts,
<https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm>
 (last visted Feb. 23, 2024).....2

Glossary: A Guide to the Language of the Futures Industry,
<https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited Feb. 23, 2024)..... 2, 3, 4

Collin Sherwin, *Where can you bet on the 2024 US presidential election?*, DraftKings.com (July 22, 2022),
<https://dknetwork.draftkings.com/2022/7/14/23216300/us-presidential-election-where-is-betting-legal-2024-odds-joe-biden-donald-trump>21

Contest, The Britannica Dictionary,
<https://www.britannica.com/dictionary/contest> (last visited Feb. 23, 2024)30

Fanduel Sportsbook,
<https://canada.sportsbook.fanduel.com/en/sports/navigation/32473.25/32492.25>
 (last visited Feb. 23, 2024).....29

Gaming:

Black’s Law Dictionary, <https://thelawdictionary.org/gaming/>
 (last visited Feb. 23, 2024).....28

Merriam-Webster Online Dictionary,
<https://www.merriam-webster.com/dictionary/gaming> (last visited Feb. 23, 2024)..... 28, 29

Involve:

Merriam-Webster Online Dictionary,
<https://www.merriam-webster.com/dictionary/involve>
 (last visited Feb. 23, 2024)..... 22, 35

Random House College Dictionary (revised ed. 1979)..... 22, 35

Riverside University Dictionary (1983)..... 22, 35

Roget’s International Thesaurus (7th ed. 2010).....22

Letter from Vincent McGonagle, Dir, Div. of Mkt. Oversight, to Neil Quigley, Deputy
Vice-Chancellor, Research, Victoria Univ. of Wellington (Oct. 29, 2014)
<https://www.cftc.gov/csl/14-130/download>3

Tyler Yeargain, *Fake Polls, Real Consequences: The Rise of Fake Polls and the Case for Criminal Liability*,
85 MISSOURI L. REV. 129 (2020)48

Underlying, Black’s Law Dictionary (11th ed. 2019)2

U.K. Gambling Commission, *License Conditions and Codes of Practice*
(Jan. 31, 2024) [https://www.gamblingcommission.gov.uk/
licensees-and-businesses/lccp/print](https://www.gamblingcommission.gov.uk/licenses-and-businesses/lccp/print)49

PRELIMINARY STATEMENT

Before the Court is an order of the Commodity Futures Trading Commission (“Commission” or “CFTC”), which declined to grant plaintiff KalshiEX (“Kalshi”) permission to offer “Congressional Control Contracts” on Kalshi’s registered contract market. The proposed contracts would have enabled participants to take a position on the binary (yes/no) question: “Will <chamber of Congress> be controlled by <party> for <term>?”. The CFTC made three determinations in its disapproval of the contracts, each of which was sound. One, it determined that the contracts involve “gaming” — that is, betting, wagering or gambling on elections. Two, it determined that the contracts involve activity that is unlawful under state law, as many states’ laws prohibit betting, wagering, or gambling on elections. And three, it determined that the contracts are contrary to the public interest because, *inter alia*, they (i) cannot reasonably be expected to be used more than occasionally for commercial or hedging interests; (ii) could be used in ways that adversely affect the integrity and perception of integrity of elections; (iii) could be manipulated to influence elections or electoral perceptions; and (iv) could put the CFTC in the position of having to investigate election-related activities. Kalshi asks this Court to vacate the Commission’s decision and order that Kalshi’s election contracts be allowed to trade on a regulated contract market. The Court should instead rule in favor of the Commission, which was well within its discretion to refuse to nationally legalize gambling on elections via the financial markets it regulates.

THE CFTC AND REGULATORY FRAMEWORK

A. Brief Introduction to the CFTC, the Commodity Exchange Act, and Derivatives.

The CFTC is an independent federal agency that regulates derivatives markets, and administers the Commodity Exchange Act (the “CEA” or “Act”). A “derivative” is a financial

instrument, such as a future, option, or swap, whose price is directly dependent upon—that is, “derived from”—the value of something else, such as an agricultural or financial commodity.¹

Relevant here, an “event contract” is a type of derivative contract whose payoff is based on a specified “underlying” “event, occurrence, or value.”² For example, an event contract might be based on the occurrence, nonoccurrence, or extent of an occurrence of a weather event such as snowfall or rainfall. The asset or other factor that gives rise to the rights and obligations in a derivative contract is called its “underlying.” *Underlying*, BLACK’S LAW DICTIONARY (11th ed. 2019). In a futures contract, the “underlying” is generally a specified quality and quantity of the cash market asset in the same commodity. Thus, for example, in a corn futures contract, the “underlying” would be corn.

The stated purposes of the CEA include to ensure “fair and financially secure trading facilities” and protection of “all market participants from fraudulent or other abusive sales practices” in the markets that it regulates. 7 U.S.C. § 5(a)-(b). One way the CEA does this is with broad anti-fraud and anti-manipulation authority. The Act prohibits any person from directly or indirectly employing or attempting to employ a manipulative or deceptive device or engaging in fraud in connection with any product on a derivatives exchange, or any commodity in interstate commerce. 7 U.S.C. § 9. Thus, the Commission’s enforcement authority includes investigating and bringing actions against persons who commit manipulative or fraudulent acts in connection with derivatives

¹ CFTC, *Glossary: A Guide to the Language of the Futures Industry*, <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited Feb. 23, 2024).

² CFTC, *Contracts & Products: Event Contracts*, <https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm> (last visited Feb. 23, 2024).

markets,³ including registered exchanges, as well as manipulative or fraudulent acts in connection with an underlying commodity market.⁴

The CEA requires that futures and certain other derivatives instruments be traded only on regulated exchanges. Retail customers' only legal avenue to trade futures contracts, or derivatives such as event contracts, is on a contract market registered with the CFTC.⁵ *See* 7 U.S.C. §§ 2(e), 6, 6c(b); 17 C.F.R. § 33.3; *see also In re Blockratize*, CFTC No. 22-09, 2022 WL 73864 (Jan. 3, 2022) (consent order).⁶

Kalshi is a type of regulated exchange called a “designated contract market” (“DCM”). As a regulated exchange, a DCM must comply with certain core principles laid out in 7 U.S.C. § 7(d),

³ *See, e.g., In re Ceres Global Ag. Corp.*, CFTC No. 24-01, 2023 WL 8650000 (Oct. 23, 2023) (consent order) (attempted manipulation of the oats futures markets); *CFTC v. Xie*, 1:23-cv-01947, Dkt. No. 17, 2023 WL 8532325 (N.D. Ill. 2023) (consent order) (fraudulent trades in the futures market based on misappropriated information).

⁴ *See, e.g., CFTC v. Glen Point Capital Advisors*, 1:22-cv-10589, Dkt. 1 (S.D.N.Y. 2022) (complaint) (manipulative scheme in cash market to trigger payout in corresponding derivative); *CFTC v. Safeguard Metals, LLC*, 2:22-cv-00691, Dkt. No. 201 (C.D. Cal. 2023) (consent order) (fraudulent solicitations in cash metals transactions).

⁵ Legalized online sports betting websites and apps, such as FanDuel or Draft Kings, are not designated by the Commission as contract markets, but instead are permitted to operate under applicable state law and certain provisions in the Unlawful Internet Gambling Enforcement Act. 31 U.S.C. §§ 5361-5367. The rules and protections in the CEA and Commission Regulations do not apply to legalized betting websites and apps insofar as they do not operate in markets or offer products that are subject to the CFTC's jurisdiction.

⁶ Separately, and without engaging in the process under 7 U.S.C. § 7a-2(c)(5)(C) and Regulation 40.11(a), the staff of the Commission's Division of Market Oversight issued a staff No-Action letter to Victoria University of Wellington, New Zealand in 2014. Letter from Vincent McGonagle, Dir., Div. of Mkt. Oversight, to Neil Quigley, Deputy Vice-Chancellor, Research, Victoria Univ. of Wellington, (Oct. 29, 2014), <https://www.cftc.gov/csl/14-130/download>. Victoria University, which is not registered with the CFTC as a contract market, had “propose[d] the creation of a small-scale, not-for-profit, online market for event contracts in the U.S. for educational purposes,” limiting the traders on that proposed platform to 5,000 persons. *Id.* The No-Action request “was not in any way premised upon claims that its proposed event contracts have any hedging or price-basing utility.” *Id.* That No-Action letter is now the subject of litigation. *Clarke v. CFTC*, 24-cv-00167 (D.D.C.). Aristotle, which associates itself with the recipient of the No-Action letter, has filed an amicus brief in this matter in support of Kalshi. Dkt. No. 26.

including, among other things, requirements to list contracts not readily susceptible to manipulation and to have the capacity to prevent manipulation and price distortion through surveillance and enforcement. *See, e.g.*, 7 U.S.C. § 7(d)(3), (d)(4).

B. The Public Interest in Regulated Derivatives Markets: Hedging and Pricing.

The CEA includes a Congressional finding that transactions subject to the Act “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.” 7 U.S.C. § 5. In other words, there is a codified public interest in regulation of derivatives markets because such markets provide a means to “hedge” economic risks. As it relates to markets regulated by the Commission, “hedging” utility in derivatives markets is generally understood to be the use, by market participants, of derivatives to manage the various price risks incidental to their commercial activity.⁷ A further codified public interest in the regulation of derivatives markets is the concept of price discovery, or the process of determining the price level for a commodity through interaction of buyers and sellers, and based on supply and demand conditions.⁸

⁷ For instance, airlines that need to buy jet fuel in the foreseeable future might manage the risk that the price will increase by entering into a derivative contract, *e.g.* a futures contract, to hedge against that risk. It would take a “long” position, *i.e.*, a futures contract that will increase in value if the price of the airline’s fuel increases. On the other hand, a fuel supplier might manage the risk that the price of oil will decline by taking a “short” position, *i.e.*, a futures contract that will increase in value if the price of fuel goes down. The derivatives markets also include “speculators” who trade to profit from price movements, despite having no use for the underlying commodity. For instance, a trader might take long positions in oil derivatives simply based on a view that fuel prices will increase. Speculators are considered important because they help ensure that hedgers can find counterparties with whom to trade.

⁸ CFTC, *Glossary: A Guide to the Language of the Futures Industry*, <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited Feb. 23, 2024).

From 1974 to 2000, the CEA required exchanges to demonstrate to the Commission that any new contract was in the public interest before it was permitted to be listed for trading on an exchange. *See* S. Rep. No. 1194, 93rd Cong., 2d Sess. 36 (1974). This meant that each contract to be traded on a DCM had to meet an “economic purpose test” and not otherwise be contrary to the public interest. *See* Contract Market Designation, 40 Fed. Reg. 25849 (June 19, 1975). To meet the economic purpose test, the DCM was “expected to establish that something more than occasional use of the contract for hedging or price basing⁹] exists, or can reasonably be expected to exist.” *Id.* at 25,850.¹⁰

Over the years, the procedure for designating a new contract was streamlined. In 2000, Congress added CEA Section 5c(c), which significantly changed the Commission’s role in allowing or disallowing the trading of particular contracts, and empowered DCMs to “self-certify” that new contracts comply with the Act and CFTC regulations. *See* Pub. L. No. 106-554, 114 Stat. 2763 (2000); 7 U.S.C. § 7a-2(c)(5); 17 C.F.R. §§ 40.2, 40.3. In 2010, Congress enacted a “Special Rule” for certain event contracts, which is the subject of this case. 7 U.S.C. § 7a-2(c)(5)(C) (entitled “Special rule for review and approval of event contracts and swap contracts” (“Special Rule”)).

C. The CEA’s “Special Rule” for Certain Event Contracts.

For most derivatives contracts, a DCM can self-certify a new product and trade it within one business day of submission to the CFTC, without waiting for the Commission to take any action. 7

⁹ Similar to price discovery, price basing occurs when producers, processors, merchants, or consumers of a commodity establish commercial transaction prices based on the futures price for that or a related commodity. AR 18.

¹⁰ To make that showing, the market was required to provide evidence that 1) the prices in the futures transaction can reasonably be expected to be generally quoted and disseminated as a basis for determining prices to producers, merchants, or consumers of the commodity or its byproducts and 2) such transaction can be expected to be utilized by merchants or consumers engaged in handling the commodity or its byproducts as a means of hedging themselves against possible loss through fluctuations in price.

U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2. Alternatively, a DCM may voluntarily submit their new products to seek pre-approval, in which case the Commission will review the submission and approve the product unless it violates a specific provision of the CEA or the Commission’s regulations. 7 U.S.C. § 7a-2(c)(4)-(5); 17 C.F.R. § 40.3.

However, for certain event contracts, the Special Rule authorizes the Commission to review and determine whether a given contract or transaction should be disallowed as contrary to the public interest. *See* CEA Section 5c(C)(5), codified at 7 U.S.C. § 7a-2(c)(5)(C). The Special Rule provides that the Commission “may determine” that certain “agreements, contracts, transactions, or swaps in excluded commodities^[11] that are *based upon* the occurrence, extent of an occurrence, or

¹¹ “Excluded commodity” is a type of intangible commodity, and includes such things as interest rates, indices, and occurrences. The CEA defines “excluded commodity” as:

- (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;
- (ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—
 - (I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or
 - (II) based solely on one or more commodities that have no cash market;
- (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or
- (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—
 - (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and
 - (II) associated with a financial, commercial, or economic consequence.

7 U.S.C. § 1a(19). Despite their name, “excluded” commodities are subject to the CEA. *See, e.g., United States v. Wilkinson*, 986 F.3d 740, 745 (7th Cir. 2021) (noting that broad-based indices are “excluded commodities” that “remain ‘commodities’ under the Act as a whole, including its fraud provisions”).

contingency,” *i.e.* event contracts, “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.”

7 U.S.C. § 7a-2(c)(5)(C)(i) (emphases added). If an event contract or transaction therein “involve[s]” one of these enumerated activities and the Commission has determined the contract or transaction to be contrary to the public interest, that contract may not be listed or made available for trading through a registered entity. 7 U.S.C. § 7a-2(c)(5)(C)(ii). With respect to “gaming,” legislative history suggests that when the CFTC evaluates the public interest, it should consider whether the “proposed derivatives contract would be used predominantly by speculators or participants not having a commercial or hedging interest,” and if so, the Commission is authorized to determine “that a contract is a gaming contract” rather than one that has a “hedging or economic use.” *See* 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010).

To establish a process for determining whether an event contract is prohibited from listing, the Commission enacted Regulation 40.11(c), which provides for a 90-day review period. 17 C.F.R. § 40.11(c). If the Commission decides to engage in this review, it must request that the registered entity suspend the listing or trading of the contract under review.¹² 17 C.F.R. § 40.11(c)(1). Nothing in the CEA, CFTC regulations, or any other law requires that the CFTC engage in a notice and comment process or formal hearings in evaluating event contract submissions.

¹² For that reason, a DCM may choose to receive definitive resolution regarding an event contract that may be implicated by 7 U.S.C. § 7a-2(c)(5)(C) by submitting the product for Commission pre-approval under 17 C.F.R. § 40.3.

D. Prior Application of the “Special Rule” to Political Event Contracts.

The Commission has completed a review under 7 U.S.C. § 7a-2(c)(5)(C) and Regulation 40.11(a) once before. In December 2011, North American Derivatives Exchange (NADEX), a DCM, self-certified a variety of political event contracts for the 2012 election cycle, including contracts involving Democratic or Republican Control of the House of Representatives, Democratic or Republican Control of the Senate, and United States President Binary Contracts. The Commission exercised its authority under the Special Rule to review the contracts, and issued an order prohibiting their trading. CFTC, *CFTC Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts* (Apr. 2, 2012), available at <https://www.cftc.gov/PressRoom/PressReleases/6224-12>. The Commission found that these contracts involved “gaming” and were contrary to the public interest. *Id.* Among other findings, the Commission noted that the unpredictability of specific economic consequences of an election meant the contracts could not reasonably be expected to be used for hedging on more than an occasional basis and there was no situation where the contracts’ prices could form the basis for pricing a commercial transaction involving a physical commodity. *Id.*

AGENCY PROCEEDINGS IN THIS CASE

Kalshi is a financial services company that operates as a DCM that lists event contracts for trading. On June 12, 2023, Kalshi filed a product certification (the “2023 Submission”) of the Congressional Control Contracts (or “Contracts”), pursuant to Section 5c(c)(1) of the CEA and Regulation 40.2.¹³ AR 24, 26. Kalshi’s website touts press coverage that describes the Congressional

¹³ This product certification followed Kalshi’s prior voluntary submission of a largely similar contract for pre-approval in 2022 (the “2022 Submission”). AR 3058-3146. While the 2022 Submission was under review, Kalshi sought and received several extensions of the review period. AR 3197, 3215, 3267. Kalshi ultimately withdrew the 2022 Submission shortly before it made the 2023 Submission. AR 3275.

Control Contracts as “Election Gambling,” “Political Betting,” “election betting,” and an “Election-Betting Market.”¹⁴

The Congressional Control Contracts are binary (yes/no) event contracts based on the question: “Will <chamber of Congress> be controlled by <party> for <term>?”. AR 27. The Contracts permit market participants to choose which political party will control either the House of Representatives or Senate. AR 26. The settlement values of the Congressional Control Contracts are determined by the party affiliation of the leader of the identified chamber of Congress on the expiration date. AR 32. In the case of the House of Representatives, the leader is the Speaker of the House, and in the case of the Senate, the leader is the President Pro Tempore. AR 32. Upon settlement, the holder of one side of the contract is paid a dollar per contract, and holders of the opposite position receive nothing. AR 28.

Kalshi planned to list the Congressional Control Contracts every two years, corresponding to each Congressional term, with the contracts expiring at 10:00 A.M. Eastern Time on February 1 of the year the relevant Congressional term begins. AR 26, 33. The Contracts would have a notional value of one dollar with a minimum price fluctuation of \$0.01 and would be purchased in multiples of 5,000 contracts per order. AR 32-33. During the time the contract is open, traders would have the ability to adjust their positions and trade freely. AR 28. The Contracts would have tiered position limits depending on the category of market participant—individual, entity, or eligible contract participant—and whether the participant has a “demonstrated established economic hedging need.”¹⁵ AR 32-33. An institutional trader would have been permitted to place a bet of up to \$100,000,000. AR 32.

¹⁴ *Press*, Kalshi, <https://kalshi.com/blog/press> (last visited Feb. 23, 2024).

¹⁵ The 2023 Submission contract terms and conditions included some purported safeguards including a prohibition of trading by certain individuals and entities, including: 1) candidates for

Shortly after Kalshi submitted the Congressional Control Contracts, the CFTC commenced a 90-day review of the contracts based on its determination that the Contracts may involve an activity enumerated in Regulation 40.11(a) and Section 5c(C)(5) of the CEA. AR 148. In accordance with Regulation 40.11(c)(1), the CFTC requested that Kalshi suspend any listing and trading of the Contracts during the pendency of the review period. AR 148. As part of the review, though not required by the CEA or Regulation 40.11, the CFTC sought public comment on specific questions related to Kalshi's self-certification during a 30-day public comment period. AR 149. The CFTC's questions covered a variety of topics, including: whether the Contracts involve gaming or an activity that is unlawful under State or Federal law; whether and how the Contracts might serve a hedging function; whether the Contracts are contrary to the public interest; and whether the Contracts could be used to undermine election integrity including by influencing perception of a political party or candidate or by implicating attempted election manipulation. AR 150.

On September 22, 2023, at the conclusion of the review period, the Commission issued an Order prohibiting Kalshi from listing the Congressional Control Contracts for trading. The Commission determined that the Contracts "involve" two enumerated activities – gaming and activities unlawful under state law. The Commission then determined that the Contracts were contrary to public interest and, as such, prohibited them from listing and trading. AR 1-23.

Noting that "involve" is not defined by statute for purposes of Section 5c(c)(5)(C)(i), the Commission looked to its ordinary meaning in analyzing whether the Congressional Control Contracts "involve" enumerated activities. AR 5. The Commission drew the ordinary meaning

federal or statewide public office; 2) paid campaign staffers on Congressional campaigns; 3) paid employees of Democratic and Republican Party organizations; 4) paid employees of political action committees ("PACs") and "Super PACs" (independent expenditure only political committees); 5) paid employees of major polling organizations; 6) existing members of Congress; 7) existing paid staffers of members of Congress; 8) household members and immediate family members of any of the above; and 9) "any of the above listed institutions themselves."

from multiple dictionaries and determined that the definitions of “involve” include “to relate to or affect,” “to relate closely,” to “entail,” or to “have an essential feature or consequence.” AR 5. The Commission rejected Kalshi’s proposed narrower reading that a contract involves an enumerated activity only if that activity is the contract’s underlying. AR 6. The Commission noted that Kalshi’s reading is inconsistent with the CEA, including Section 5c(c)(5)(C)(i) itself, because when the CEA refers to a contract’s underlying, it uses the word “underlying” or states what the contract is “based on” or “based upon.” AR 6. The Commission reasoned that, most notably, Section 5c(c)(5)(C)(i) itself uses “based on” to describe event contracts as those “based on an occurrence, extent of an occurrence, or contingency.” AR 6. Thus, the Commission reasoned, the only thing Section 5c(c)(5)(C)(i) says about the underlying is that it must be a certain kind of excluded commodity (an event contract) and not that it must be one of the enumerated activities. AR 6-7. On these findings, the Commission reasoned that Congress’s choice of the broader term “involve” means that CEA Section 5c(c)(5)(C)(i) broadly captures both contracts whose underlying is one of the enumerated activities and contracts with a different connection to one of the enumerated activities. AR 7.

In finding that the Congressional Control Contracts “involve” the enumerated activity of “gaming” the Commission applied the ordinary meaning of “gaming” to include betting or wagering on elections. AR 8-10. The Commission reasoned that: (1) dictionaries define “gaming” to mean “gambling;” (2) under most state laws “gambling” involves staking something of value upon the outcome of a game, contest, or contingent event; (3) the Unlawful Internet Gambling Enforcement Act (“UIGEA”) defines the term “bet or wager” as “the staking or risking by any person of something of value upon the outcome of a contest of others ..., upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;” and (4) state statutes link the terms “gaming” or “gambling” to betting or wagering on elections. AR 8-9. Accordingly, because taking a position in the Congressional Control

Contracts would be staking something of value (*i.e.* betting or wagering) upon the outcome of a contest of others (*i.e.* the outcome of Congressional elections), the Contracts involve “gaming.” AR 10.

As to unlawful activity, the Commission found that the Congressional Control Contracts involve an activity that is unlawful under state law because betting or wagering on elections is prohibited by numerous state statutes and because several state court decisions hold that betting or wagering on elections is illegal. AR 11-12. The Commission reasoned, and Kalshi does not contest, that taking a position in the Congressional Control Contracts would be staking something of value (or betting) upon the outcome of contests between electoral candidates, which is illegal in a number of states. AR 12-13. The Commission also explained that to permit nationwide election gambling would directly undermine important state interests in controlling election gambling. AR 13 n.28.

Having found the Contracts “involved” two enumerated activities, the Commission next evaluated whether the Contracts are contrary to the public interest. AR 12. The Commission found that the Congressional Control Contracts are contrary to public interest because of their negligible hedging and price-basing utility, AR 15-19, because of their potential negative impact on election integrity or the perception of election integrity, AR 19-22, and because permitting trading in the Contracts could require the Commission to assume a role in overseeing the electoral process, AR 22-23. The Commission also explained that to permit nationwide election gambling would directly undermine important state interests in controlling election gambling. AR 13 n.28.

In assessing the hedging and price-basing utility, the Commission applied a form of the “economic purpose test” supported by the legislative history of CEA Section 5c(c)(5)(C)(i), as well as the Congressional finding in CEA Section 3 of a national public interest in well-regulated markets for hedging and price basing. AR 15. This entailed determining whether the Contracts could be reasonably expected to be used for hedging and/or price basing on “more than an occasional basis”

or could reasonably be expected to be used predominantly by market participants having a commercial or hedging interest. AR 19. The Commission examined the Contracts' salient features, considered the relevant comments, and applied its expertise to make a series of findings. AR 15-18. The Commission found that control of a chamber of Congress does not, in and of itself, have sufficiently direct, predictable, or quantifiable economic consequences for the Congressional Control Contracts to serve an effective hedging function. AR 17. The Commission acknowledged that control of a chamber of Congress may ultimately have economic effects but that those eventual effects are diffuse and unpredictable, considering the many intervening events and variables that exist between control of a chamber of Congress and the actual implementation of policy, such that the Contracts could be useful for specific, identifiable hedging purposes. AR 17. The Commission noted the specifications for the contract, including the binary nature of the payout and the settlement only once every two years, further limited the hedging capabilities of the contract. AR 17-18. For these same reasons, the Commission explained that the Contracts could not predictably be used for price basing. AR 18-19.

As to election integrity, the Commission found that the Contracts could potentially adversely affect election integrity or the perception of election integrity by creating monetary incentives to vote (including as an organized collective) for particular candidates or by incentivizing the spread of misinformation in order to influence the markets and that the market could be used to influence perceptions about elections. The Commission cited, among other things, comment letters from six United States Senators expressing serious concerns along those lines. AR 19-20.

The Commission noted the difficulty of guarding against misinformation and manipulative activity because the Contracts have no underlying cash market and instead the price forming information is driven largely by opaque and unregulated sources such as polling and voter surveys. AR 20-21. This differs from the reliable informational sources, such as information in government

crop forecasts, that are used to price the vast majority of commodities underlying Commission-regulated derivatives contracts. AR 21.

The Commission found that the Contracts' proposed trading prohibitions provided insufficient protections against manipulative activities because they do not exclude all persons who could have a motivation to manipulate the markets, nor do they prevent the prohibited individuals and entities from engaging in activity other than trading that could artificially move the market in the Congressional Control Contracts. AR 22.

Finally, the Commission found that as a regulator of the Congressional Control Contracts markets, the CFTC could find itself in the position of investigating suspected manipulation of the markets, which could, by extension involve investigating election-related activities. AR 22-23. The Commission observed that several commenters, including members of the House of Representatives, noted that the Commission is not equipped or well suited for this role, which falls well outside its mandate as established by Congress. AR 22-23.

In light of these findings, the Commission determined that the Congressional Control Contracts involve gaming and activity that is unlawful under State law, and are contrary to the public interest. Accordingly, the Commission ordered that pursuant to CEA Section 5c(c)(5)(C)(ii) and Regulation 40.11(a)(1), the Congressional Control Contracts are prohibited and shall not be listed for clearing or trading on or through Kalshi. AR 23.

SUMMARY OF ARGUMENT

Kalshi's arguments are based overwhelmingly on unreasonable interpretations of the CEA, mischaracterizations of the Commission's Order, straw men, faulty logic, and mistaken reliance on evidentiary standards that apply to rulemakings and not individual adjudications like this one. The CFTC is entitled to judgment as a matter of law for the following reasons:

First, the CFTC correctly applied the ordinary and broad meaning of “involve,” in determining whether the Congressional Control Contracts and transactions therein involve an enumerated activity under CEA Section 5c(c)(5)(C)(i). The Commission’s application of the broad meaning of “involve” to include “to relate to or affect,” “to relate closely,” to “entail,” or to “have as an essential feature or consequence,” is supported by dictionary definitions, the usage of other terms in the CEA, and the legislative history of the statutory language of Section 5c(c)(5)(C)(i), and is reinforced by multiple tools of construction. Kalshi asserts that a contract can only “involve” an enumerated activity “when the underlying event constitutes or relates to that activity.” This argument disregards the plain meaning of “involve” and is not consistent with terms in the CEA. Kalshi further accuses the Commission of using “shifting” definitions of “involve,” but the accusation is baseless. The definition is not “shifting;” it is just broad, which the Commission explained in its Order in a passage Kalshi simply ignores.

Second, the Commission correctly determined that the Contracts involve “gaming.” In so doing, the Commission applied the ordinary meaning of “gaming” to cover “betting or wagering on elections” including “staking something of value on the outcome of contests of others.” This application is supported by the use of the terms “gaming” and “gambling” in both state and federal statutes, the purpose of the CEA Section 5c(c)(5)(C)(i), and the legislative history of CEA Section 5c(c)(5)(C)(i). The Commission then correctly concluded that the Contracts involve gaming pursuant to Section 5c(c)(5)(C)(i), because taking a position in the Contracts would be staking something of value on the outcome of the contest of others, where the Contracts are premised on the outcome of Congressional elections. Kalshi argues that “gaming” does not cover betting on elections, and only narrowly covers activities that involve a game, such as playing cards or betting on a football match. This narrow reading contradicts Kalshi’s own view that a contract only “involves”

gaming if the underlying is “gaming” (as opposed to a “game” like football) and is, in any event, not supported by the other statutes Kalshi cites, or Section 5c(c)(5)(C)(i) or its legislative history.

Third, the Commission correctly determined that the Contracts involve activity that is “unlawful under any ... State law.” The Commission found that the Congressional Control Contracts involve betting or wagering on elections, an activity the Commission observed is unlawful under numerous state laws, because staking something of value on the outcome of contests between electoral candidates is an essential feature or consequence of transacting in the Contracts. Kalshi does not challenge these findings, but instead argues that the Commission’s analysis threatens to undermine its own exclusive jurisdiction and regulatory authority over derivatives markets by permitting states to dictate trading prohibitions by simply outlawing activity. This argument is without merit because contracts that involve enumerated activities are subject to prohibition only if the Commission, in its discretion, determines they are contrary to public interest.

Fourth, the Commission rationally considered the contracts’ hedging and price-basing utility in determining whether the Congressional Control Contracts are contrary to public interest. The Commission’s use of an economic purpose test is supported by the text of the CEA and the relevant legislative history.

Fifth, the Commission reasonably determined that the Congressional Control Contracts could not reasonably be expected to be used for hedging or price basing “on more than an occasional basis.” This determination was based on the Commission’s analysis of the relevant facts and application of its expertise. Kalshi wastes pages of its brief disputing a conclusion the Commission did not reach—that the Contracts could *never* be used by *anyone* to hedge a risk. But nothing that Kalshi cites undermines the Commission’s judgment that, even considering Kalshi’s assertions of certain narrow hedging uses, the Contracts cannot reasonably be expected to be used for hedging or price basing on more than an occasional basis.

Sixth, the Commission reasonably determined the Contracts may be vulnerable to manipulative efforts, and such events or efforts could undermine perception of the integrity of elections, the integrity of those elections, and put the Commission in a role that is misaligned with the Commission’s mission. The specifications of the contract, the lack of an underlying cash market, and the record, including the opinions of economists that Kalshi cites, all point to a contract that could be manipulated, especially in short bursts. Kalshi argues that the Commission did not consider Kalshi’s proposed public interest of socially valuable data, but that is not true—the Commission acknowledged that claim, but reasonably chose to weigh that interest against other factors, including the potential for manipulative events which could affect confidence in, or the even the outcome of, elections, and the possibility that the Commission would be drawn into investigations of manipulative events in elections. The Commission made a predictive, policy decision, and while Kalshi has a difference in view, that disagreement is no reason for this Court to disturb the decision.

STANDARD OF REVIEW

In cases challenging a final agency action under the Administrative Procedure Act (“APA”), the Rule 56 summary judgment standard does not govern the court’s review. *Truitt v. Kendall*, 554 F. Supp. 3d 167, 174 (D.D.C. 2021). Instead, the court “sits as an appellate tribunal,” *Concert Inn, LLC v. Small Bus. Admin.*, 616 F. Supp. 3d 25, 29 (D.D.C. 2022) (quoting *Rempfer v. Sharfstein*, 583 F.3d 860, 865 (D.C. Cir. 2009)), and applies the APA’s standards for judicial review, *Citizens for Resp. & Ethics in Washington v. FEC*, 316 F. Supp. 3d 349, 366 (D.D.C. 2018), *aff’d*, 971 F.3d 340 (D.C. Cir. 2020). Under those standards, the court determines, as a matter of law, “whether the agency’s decision was arbitrary, capricious, an abuse of discretion, or unlawful,” *Medica Ins. Co. v. Becerra*, No. 1:22-CV-1440-RCL, 2023 WL 6314571, at *5 (D.D.C. Sept. 28, 2023) (citing *Truitt*, 554 F. Supp. 3d at 174 and 5 U.S.C. § 706).

The arbitrary-and-capricious standard “requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Judicial review “is deferential, and a court may not substitute its own policy judgment for that of the agency.” *Id.* Rather, the court “simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *Id.*

Kalshi’s criticisms of the Commission’s analysis are flawed due to a basic legal error: They rely on the wrong procedural requirements under the APA for adjudicating a product certification. Kalshi mistakenly relies on *rulemaking* cases in arguing about the Commission’s analysis of the record. However, the Order at issue is an “informal adjudication,” and not a rulemaking. This is because the Commission issued a case-specific decision and was not statutorily required to engage in a notice and comment process or hold proceedings on the record. *See* 7 U.S.C. § 7a-2(c)(5)(C); *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017).¹⁶ This means that while under the APA the agency must “examine the relevant data and articulate a satisfactory explanation for its action,” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983), it need not include “an exhaustive analysis of the record” or “cite or explain its reasoning as to every piece of evidence that could be read to run contrary to its determination,” *Concert Inv., LLC*, 616 F. Supp. 3d at 33. Rather, the agency need only “engage with as much evidence as necessary such that its logic can reasonably be discerned.” *Id.* (citing *Bowman Transp. Inc. v. Arkansas-Best Freight Sys.*, 419 U.S. 281, 286 (1974)). And, “even if not explicitly backed by information in the record,” “common

¹⁶ Rulemakings carry out broad applications of more general principles that resemble legislation, rather than case-specific individual determinations. *Neustar*, 857 F.3d at 893. The fact that an order rendered in an adjudication “may affect agency policy and have general prospective application,” does not make it a rulemaking. *Conf. Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013). Seeking public comment also does not affect whether an agency action is a rulemaking or an informal adjudication. *Neustar*, 857 F.3d at 895.

sense and predictive judgments” may be attributed to the agency’s expertise. *Phoenix Herpetological Soc’y, Inc. v. U.S. Fish & Wildlife Serv.*, 998 F.3d 999, 1005-06 (D.C. Cir. 2021).

Because Kalshi is challenging the Commission’s statutory interpretations, the two step-analysis applies—at least as of this writing—as set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In the first step, the court examines the statute de novo and employs traditional tools of statutory construction to determine if the intent of Congress is clear. *Nat’l Ass’n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1228 (D.C. Cir. 2007). In determining whether Congress’s intent is clear, the court reviews the statute’s text, structure, purpose, and legislative history. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 605 (D.C. Cir.), *on reh’g en banc*, 671 F. App’x 822 (D.C. Cir. 2016), *and on reh’g en banc in part*, 671 F. App’x 824 (D.C. Cir. 2016). If the intent is clear, “that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013) (quoting *Chevron*, 467 U.S. at 842-43).

If a statute is ambiguous, the analysis proceeds to step two, and the court will defer to the agency’s interpretation as long as it is “based on a permissible construction of the statute.” *Pub. Citizen, Inc. v. U.S. HHS*, 332 F.3d 654, 659 (D.C. Cir. 2003).¹⁷ In this case, the Court should find that even if there were no deference due to the agency, the Commission’s construction of the statute is the most reasonable interpretation.

Finally, where Congress charges an agency with determining whether something is contrary “to the public interest,” courts recognize broad authority on the part of the agency. *See, e.g., Chamber*

¹⁷ An agency interpretation that is enunciated through an action that lacks the force of law, such as a policy statement, is subject to *Skidmore* deference, in which the court will accept agency interpretations of ambiguous statutes if they are persuasive. *Pub. Citizen, Inc.*, 332 F.3d at 660, 662 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). The Commission’s Order is an adjudication subject to the more deferential *Chevron* standard of review because it was an action authorized by Congress that carries the force of law. *Menkes v. U.S. DHS*, 637 F.3d 319, 330-31 (D.C. Cir. 2011).

of Commerce v. SEC, 412 F.3d 133, 139 (D.C. Cir. 2005); *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 795 (1978); *see also Sw. Airlines Co. v. Transp. Sec. Admin.*, 650 F.3d 752, 756 (D.C. Cir. 2011) (Kavanaugh, J.) (noting the “distinction between the objective existence of certain conditions and the [agency]’s determination that such conditions are present, stressing that a statute phrased in the latter terms fairly exudes deference to the [agency].”) (quoting *AFL-CIO v. Chao*, 409 F.3d 377, 393 (D.C. Cir. 2005)) (Roberts, J., concurring in part and dissenting in part). Under *State Farm*, 463 U.S. at 52, when the Commission makes a policy determination as to whether something is contrary to the public interest, it need only demonstrate “a rational connection between the facts found and the choice made.” *See, e.g., Nasdaq Stock Market LLC v. SEC*, 38 F.4th 1126, 1135 (D.C. Cir. 2022) (quoting *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 52); *see also Verizon v. FCC*, 740 F.3d 623, 649 (D.C. Cir. 2014) (same). And a court may not scrutinize an agency’s decision for perfect clarity: It is sufficient that the agency’s path may “reasonably be discerned.” *CBOE Futures Exch. v. SEC*, 77 F.4th 971, 977 (D.C. Cir. 2023) (quotations omitted).

ARGUMENT

I. The Commission correctly concluded that the Congressional Control Contracts involve both gaming and activity that is unlawful under state law.

A. The Commission did not err in applying the ordinary meaning of “involve.”

The Commission correctly rejected Kalshi’s made-up definition of “involve” as a reference to a contract’s “underlying.” As the Order explained, because the statute does not define “involve,” the plain meaning applies, and it is broad enough to cover *both* contracts whose underlying is an enumerated activity, and contracts with a different connection to that activity. AR 7. As stated above, the Special Rule provides that the Commission “may determine” that certain “agreements, contracts, transactions, or swaps in excluded commodities that are *based upon* the occurrence, extent of an occurrence, or contingency,” *i.e.* event contracts, “are contrary to the public interest” “if the

agreements, contracts, or transactions *involve*—(I) activity that is unlawful under any Federal or State law; . . . (IV) gaming . . .” 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added).

Kalshi argues that Congress did not mean to capture in Section 5c(c)(5)(C)(i) all contracts or transactions that “involve” an enumerated activity as that word is commonly understood—only those whose “underlying” is one of the activities or “relates to” one of the activities.¹⁸ Kalshi Motion at 15. But Kalshi’s asserted definition of “involve” is not consistent with other terms in the statute, and multiple tools of construction reinforce that the ordinary and broad meaning of “involve” applies here.

“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). As explained above, “[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *City of Arlington*, 569

¹⁸ Kalshi never raised the “relates to” argument before the Commission (or even in its Complaint), and it is accordingly waived. *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1290 (D.C. Cir. 2004); *Coburn v. McHugh*, 679 F.3d 924, 929 (D.C. Cir. 2012). Until now, Kalshi argued that for purposes of Section 5c(c)(5)(C)(i), “involve” is interpreted narrowly to mean that the enumerated activity *is* the contract’s underlying event, and that this is “the only way to make sense of” the statute. *See* Compl., Dkt. No. 1 at ¶ 10; *see also* AR 6, 111, 115, 119-22, 130-132. Kalshi’s concession likely reflects a recognition that the unsupported narrow definition would create absurd results—*i.e.*, a statute that applies to nothing, or close enough that it makes no difference. And the argument that the statute applies to contracts and transactions where the underlying “relates to” an enumerated activity is *the Commission’s* argument. For example, the Congressional Control Contracts “involve” gaming because an election “relates to” gaming – *if you gamble on it* – which is what Kalshi’s Contracts are for. Collin Sherwin, *Where can you bet on the 2024 US presidential election?*, DraftKings.com (July 22, 2022), <https://dknetwork.draftkings.com/2022/7/14/23216300/us-presidential-election-where-is-betting-legal-2024-odds-joe-biden-donald-trump> (describing the contracts that have received no-action Letters from the CFTC as accepting “election bets” and noting that “[w]hile there is no federal prohibition on election betting as of yet, no state or jurisdiction in the United States has allowed it”). Kalshi offers that possibly Congress chose the term to prevent circumvention of the statute through contracts based on technically distinct events. The Commission agrees. As discussed below in the discussion of the legislative history, it appears Congress was attempting to prevent the use of these contracts to “enable gambling.” *See infra* at 33.

U.S. at 296 (quotation marks omitted). As relevant here, Section 5c(c)(5)(C)(i) unambiguously captures far more than contracts whose underlying *is* an enumerated activity.

The CEA does not define “involve,” so its ordinary meaning applies. *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). As several courts have observed, the word has “expansive connotations.” *See, e.g., United States v. Alexander*, 331 F.3d 116, 131 (D.C. Cir. 2003) (citation omitted); *United States v. Williams*, 931 F.3d 570, 575 (7th Cir. 2019); *United States v. McKenney*, 450 F.3d 39, 42-43 (1st Cir. 2006) (rejecting a “‘narrow’ definition of ‘involve’”); *United States v. King*, 325 F.3d 110, 113 (2d Cir. 2003). It means “to relate to or affect,” “to relate closely,” “to entail,” or to “have as an essential feature or consequence.”¹⁹ The Contracts here “relate closely” to gaming;²⁰ it is their essential feature; and—notwithstanding Kalshi’s assertion that “Election Gambling” (per Kalshi’s own website) is a “hedging” tool, *see infra* at 30—gaming is what these transactions “entail.” AR 10. And the Contracts likewise “relate closely” to and would “affect”—by utterly undermining—state laws that prohibit gambling on elections. AR 11-13. Accordingly, the Contracts “involve” gaming and activity that is illegal under state law, and Section 5c(c)(5)(C)(i) is satisfied.

The statute’s plain meaning is bolstered here by the “meaningful-variation canon.” *See Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022). Where Congress uses “one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.” *Id.* at 458. In the CEA, where Congress refers only to a contract’s underlying, it generally

¹⁹ *See* Merriam-Webster, <https://www.merriam-webster.com/dictionary/involve> (last visited Feb. 23, 2024); Random House College Dictionary 703 (Revised ed. 1979); Riverside University Dictionary 645 (1983); *see also* Roget’s International Thesaurus 1040 (7th ed. 2010) (giving as synonyms “entail” and “relate to”).

²⁰ As explained, *infra*, in Section I.B. “gaming” and “gambling” can be understood to mean the same thing.

uses the word “underlying,” *e.g.*, 7 U.S.C. §§ 6c(d)(2)(A)(i), 20(e), 25(a)(1)(D)(ii), or, where syntax requires, refers to what the contract is “based on” or “based upon,” 7 U.S.C. §§ 2(a)(1)(C)(i)(I), 2(a)(1)(C)(ii), 2(a)(1)(C)(iv), 6a(a)(4)(A).²¹ Nowhere does the statute define “involve” as limited to a contract’s underlying.²² If Congress intended Section 5c(c)(5)(C)(i)(V) to apply only where an enumerated activity like gaming is the underlying, it would have said so. *See Bldg. Owners & Managers Ass’n Int’l v. FCC*, 254 F.3d 89, 95 (D.C. Cir. 2001).

The “meaningful-variation” canon is especially powerful here because Section 5c(c)(5)(C)(i) uses the terms “based upon” and “involve” *in the same sentence* and differentiates between the two. First, Section 5c(c)(5)(C)(i) states that the provision applies to “agreements, contracts, transactions, or swaps in excluded commodities that are *based upon* the occurrence, extent of an occurrence, or contingency.” 7 U.S.C. § 7a-2(c)(5)(C) (emphasis added). In other words, the contract’s underlying must be an event. Then, just a few words later, Section 5c(c)(5)(C)(i) states that “such agreements, contracts, or transactions” must “involve” an enumerated activity. In context, “based upon” and “involve” must have different meanings, with “based upon” referring to the underlying and requiring only that it be an event, and “involve” retaining its broader ordinary meaning and referring not just to the underlying, but to “such agreements, contracts, or transactions” as a whole. AR 6-7.

²¹ Kalshi too does this throughout its Complaint. *See, e.g.*, Compl. ¶ 22 (“underlying”); ¶ 23 (same); ¶ 27 (same); ¶ 65 (same); ¶ 64 (“underlie” and “underlying”); ¶ 2 (“based on”); ¶ 3 (same); ¶ 4 (same); ¶ 29 (same); ¶ 81 (same).

²² Kalshi argues that certain CEA provisions using “involve” to refer to an “underlying” mean the Commission was incorrect when it observed that when Congress uses “underlying,” “based on,” or “based upon” to refer narrowly to a contract’s underlying. Kalshi Motion at 21. This mischaracterizes the Order. The Commission acknowledged that the ordinary meaning of “involve” *can* include, for purposes of Section 5c(c)(5)(C)(i)(V), contracts where an enumerated activity is the contract’s underlying. It rejected Kalshi’s contention that this was the *only* meaning of “involve.” So, the fact that certain CEA provisions use “involve” in a context where it refers to a contract’s underlying does not help Kalshi to prove that is the *only* thing to which “involve” can refer here.

The legislative history of Section 5c(c)(5)(C)(i) further supports that Congress meant to include contracts like Kalshi's that, as a whole, relate to or entail an enumerated activity. Senator Blanche Lincoln, then-Chair of the Senate Agriculture Committee, the CFTC's oversight committee, stated in colloquy that CEA Section 5c(c)(5)(C) is intended to "prevent gambling through futures markets" and to restrict exchanges from, for example, "construct[ing] an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament."²³ If Kalshi were right, and a contract "involves" gaming only if the underlying *is* gaming, none of those events would be covered—football, horseracing, and golf are "games," not "gaming." *Betting on them* is "gaming"—just like betting on elections is gaming, because it is staking something of value on a contest of others. As the Commission observed, under Kalshi's definition, "it is difficult to conceive of a contract whose underlying is 'gaming'."²⁴ AR 7 n.18. But courts must presume that Congress does not "include words that have no effect." *Mercy Hosp., Inc. v. Azar*, 891 F.3d 1062, 1068 (D.C. Cir. 2018). Here, the legislative history confirms that Congress intended 5c(c)(5)(C) to cover bets on contests of others and contracts that relate closely to illegal activity, which describes Kalshi's contracts here.

²³ See 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

²⁴ For the first time, in its brief, Kalshi suggests two possibilities: A contract whose underlying is whether someone wins the Powerball by a certain date, or one whose underlying is the World Series of Poker. Kalshi Motion 22. The first of these possibilities is a rather peculiar example that would represent an inconsequential share of potential event contracts, and nothing in the text of the CEA or its legislative history (or common sense) indicates that Congress's concerns were so picayune. Rather, the evidence is that Congress was concerned more broadly with "gambling." 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010). The second example, a contract tied to the winner of the World Series of Poker, would fall under the Commission's construction of "involve," as such a contract would both relate to or entail "gaming." By Kalshi's logic (at least in this part of its brief), this would only be a contract based on gaming if the players were themselves betting, regardless of the fact that traders would be placing their own best on the game. The position that Congress intended for that contract be considered "gaming" only where the subjects participating in the "game" are themselves betting is absurd.

Rather than engage with any of this, Kalshi contends that a contract can “involve” an enumerated activity only “when the underlying event constitutes or [now] relates to that activity” because “this is the only reading of ‘involve’ that works across all categories of enumerated activities.” Kalshi Motion at 15. Kalshi wastes an enormous amount of space in its brief arguing that the Commission’s definition is “inconsistent” and “shape-shifting,” but that is simply a false description of the Order. The Commission explained that the term is broad enough to capture the underlying *and* other features:

Congress’s choice of the broader term “involve” means that CEA section 5c(c)(5)(C)(i) can capture both contracts whose underlying is one of the enumerated activities, and contracts with a different connection to one of the enumerated activities because, for example, they “relate closely” to, “entail,” or “have as an essential feature or consequence” one of the enumerated activities.

AR 7.²⁵ Thus, the Commission clearly explained that one definition captures all five enumerated activities. Kalshi simply ignores this part of the Order.

For its part, Kalshi cites nothing to support its definition of “involve” as “the underlying,” and there is no such definition. “[I]nvolve” is unambiguously broader than “underlying,” so that is “the end of the matter,” *City of Arlington*, 569 U.S. at 296, and Section 5c(c)(5)(C)(i) applies squarely to Kalshi’s contracts. The Commission’s application of this broad meaning of “involve” was therefore the most reasonable interpretation of the statute, and should not be disturbed.

Nevertheless, Kalshi argues that when applied, the Commission’s definition of “involve” “when combined with its interpretation of ‘gaming’” “affords the CFTC a roving mandate to review—and potentially to ban—any event contract.” Kalshi Motion at 19. But, as discussed below, this argument relies on Kalshi’s mischaracterization of the Commission’s Order as defining

²⁵ If anything, Kalshi is now pushing “shape-shifting” definitions. Kalshi argues that a contract can “involve” an activity only if the underling “is” the activity Kalshi Motion at 15, or—for the first time, here in court—when the underlying “relates to” gaming. This is puzzling because, as the Commission correctly determined, the Contracts relate to gaming.

“gaming” to include all event contracts. *See infra* at 27-28. Because the Commission did not define gaming in this way, the argument is without merit.

Finally, Kalshi challenges the Commission’s application of “involve” as “making a hash of” the unlawful activity provision as it relates to both federal law and state law. This argument is also a mischaracterization of the Commission’s Order—specifically, Kalshi argues as though the Commission were defining “involve” with regard to unlawful activity as meaning that the *act of trading* the contract itself must be unlawful. On that false premise, Kalshi goes on to argue that under this definition the Commission’s authority to engage in a public interest review is meaningless because “Congress had no need to authorize public-interest review of contracts whose trading is already illegal under federal law” and any state law banning trading would be preempted by the CEA. Kalshi Motion at 20. But, again, that is not what the Commission said. The Commission did not define “involve” for purposes of unlawful activity to mean that the trading itself must be unlawful. As noted, the Commission applied the ordinary meaning of “involve” to mean “to relate to or affect,” “to relate closely,” to “entail,” or to “have as an essential feature or consequence,” and under this definition, the Commission could review event contracts that have other connections to unlawful activities. For example, the Commission could review a contract that “involves” the unlawful activity of narcotics trafficking in the sense that the contract’s payout depends on whether a certain amount of cocaine is seized by federal or state authorities in a given month. Accordingly, Kalshi’s argument that the Commission rendered its own authority meaningless, is without merit.

B. The Commission correctly determined that the Congressional Control Contracts involve gaming.

The Commission’s determination that the Congressional Control Contract involve “gaming” for purposes of CEA Section 5c(c)(5)(C) was properly based on the application of the ordinary meaning of “gaming” to “include[] betting or wagering on elections.” In explaining its decision, the Commission “note[d] that a common thread throughout the large majority of definitions of ‘gaming’

and ‘gambling’ is the act of staking something of value on the outcome of a contest of others,’ a subject on which “futures contracts traditionally have not been premised.” AR 10 n.25. Kalshi does not dispute that taking a position in the Congressional Control Contracts is betting or wagering on elections because Kalshi does not contest that the Congressional Control Contracts involve staking something of value upon the outcome of a contest of others. AR 8-10. Instead, Kalshi argues without basis that this does not amount to “gaming” because elections are not a “game” (which is different from “gaming” anyway) nor a “contest” in the sense Congress intended. Kalshi further argues “gaming” and “gambling” have different meanings, that gaming cannot include wagers based on contests, and that if gaming includes wagers based on contests the contests must be staged purely for entertainment. None of that has any basis in the statute, and this Court should reject Kalshi’s arguments.

1. The Commission did not construe “gaming” to mean the staking of money on any contingent event.

Kalshi overstates its case by suggesting the Order defined “gaming” “to include staking money on *any* contingent event beyond the parties’ control” such that every event contract would be subject to a public interest review, rendering the remaining enumerated activities in CEA Section 5c(c)(5)(C) superfluous. Kalshi Motion at 19, 27. This is a straw man. The Commission found that the Contracts involve “gaming” because taking a position in the Contracts would be “staking something of value *upon the outcome of a contest of others,*” AR 10 (emphasis added), not just any contingent event beyond the parties’ control.²⁶ This reasoning would not subject all event contracts to public interest review.

²⁶ Indeed, the Commission acknowledged that some state law definitions of “gaming” would have broader application that arguably capture all contingent events, AR 8, but the Commission did not adopt the broad definition, AR 10. Kalshi fixates on a footnote that says a contract “involves” gaming if trading it “amounts to” gaming, and repeats the term *ad nauseum*, as though it were the

The difference may best be illustrated by example: Under the Commission’s construction of “gaming,” an event contract based on who will win the Super Bowl could be categorized as “gaming” because it involves staking something of value on a contest of two teams; on the other hand, an event contract based on the how much rain the Des Moines Airport will get in a specified month would not fall within the Commission’s interpretation because, while it involves staking money on a contingent event (here rainfall), that event is not a contest of others.

2. The Commission’s interpretation of “gaming” to include betting or wagering on a contest of others is consistent with the ordinary meaning of “gaming.”

The Commission arrived at its interpretation of “gaming” by looking to ordinary, dictionary definitions of “gaming” to mean “gambling,”²⁷ and referring to both state laws and federal laws that define gambling or betting as the staking something of value upon the outcome of, among other things, a contest of others. Thus, the Commission found that staking something of value on elections amounts to “gaming” or “gambling” because it is staking something of value on the outcome of a contest of electoral candidates. AR 10.

Kalshi argues that “gaming” is more limited than “gambling,” and means “playing games of chance for money,” “casino gambling,”²⁸ and “betting on other games.” Kalshi Motion at 24.

reason the Commission ruled against Kalshi’s Contract. The Commission’s statement in the footnote is correct, but again, it is not the test the Commission applied to the Congressional Control Contracts—the Congressional Control Contracts involve gaming because they “relate to or affect,” “relate closely,” to “entail,” or to “have as an essential feature or consequence” the staking of value on a contest of others. AR 7.

²⁷ See, e.g., *Gaming*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/gaming> (defining the noun “gaming” as “the practice or activity of playing games for stakes: gambling”) (last visited Feb. 23, 2024); *Gaming*, BLACK’S LAW DICTIONARY, <https://thelawdictionary.org/gaming/> (last visited Feb. 23, 2024) (“In general, the words ‘gaming’ and ‘gambling,’ in statutes, are similar in meaning.”).

²⁸ Notably, multiple international gambling websites, including one operated by the casino giant MGM, do offer election betting. See BetMGM, <https://sports.on.betmgm.ca/en/sports/politics-61> (last visited Feb. 23, 2024); FanDuel,

Kalshi concludes an activity must involve a *game*, such as playing cards or betting on a football match, to fall under the “gaming” category. But Kalshi’s narrow interpretation is unsupportable under the plain meaning of “gaming.” For instance, Kalshi cites a dictionary definition of “gaming” that includes playing “games” for stakes, but Kalshi fails to note that the very same definition cross-references “gambling.”²⁹ See *Gaming*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/gaming>. Notably, the Supreme Court has recognized synonymy of “gaming” and “gambling” in the context of wagering or betting, and has held that the term “gaming activities” under the Indian Gaming Regulatory Act refers to the act of “gambling.” See *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 792 (2014) (“The ‘gaming activit[y]’ is (once again) the gambling.”); see also *In re Betcorp Ltd.*, 400 B.R. 266, 271 n.3 (Bankr. D. Nev. 2009) (“‘Gaming’ is generally regarded as a mild euphemism for gambling.”). Kalshi’s argument that Congress’s use of “gaming” instead of “gambling” limits the application of Section 5c(c)(5)(C) to wagers on “games” is thus without merit. *All Party Parliamentary Grp. on Extraordinary Rendition v. U.S. Dep’t of Def.*, 754 F.3d 1047, 1051 (D.C. Cir. 2014) (“Where, as here, two words share at least one common meaning, we read nothing into Congress’s use of one rather than the other.”). The Commission correctly applied the accepted meaning, which includes staking something of value on a contest of others.

3. The Commission’s interpretation of “gaming” is consistent with state and federal gambling statutes.

The Commission’s construction of “gaming” is also consistent with state gambling statutes. As the Commission’s Order notes, several state statutes define “gambling” to encompass wagering or betting on the outcome of “contests of others,” and election event contracts fit squarely within

<https://canada.sportsbook.fanduel.com/en/sports/navigation/32473.25/32492.25> (last visited Feb. 23, 2024); BetOnline, <https://www.betonline.ag/sportsbook/futures-and-props/congress-specials> (last visited Feb. 23, 2024).

²⁹ Kalshi also argues the definition is limited to contests that are staged “purely for entertainment.” But this definition is without support in any definition or statute.

this definition. Other state statutes cited in the Order define the term to include bets upon the “result” of a “game or contest.” *See, e.g.*, Ga. Code Ann. § 16-12-21(a)(1). Though Kalshi asserts that elections are not *games*, elections in which candidates are vying to win a seat in the House of Representatives or Senate are undoubtedly *contests*. *See, e.g., Contest*, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/contest> (last visited Feb. 23, 2024) (providing the definition, “a struggle or effort to win or get something,” and an example, “the presidential contest”).³⁰ Indeed, the Commission’s Order cites several state statutes that *expressly* define wagering on elections as a form of gambling. *See, e.g.*, 720 ILL. COMP. STAT. ANN. 5/28-1 (“A person commits gambling when he . . . [m]akes a wager upon the result of any game, contest, or any political nomination, appointment or election.”).

Kalshi argues that other state statutes and a federal statute support its position that “gaming” means “betting on *games*” and does not, as the Commission properly explained, include, “contests of others.” Kalshi Motion at 25. However, the state statutes Kalshi cites are broadly worded and do not exclude wagering on elections. Rather, they define “gaming” to mean engaging in “a game for any sum” or “any game for pay,” Kalshi Motion at 25 (citing Iowa Code § 725.7(1); Mass. Gen. Laws ch. 23K, § 2), which for a person placing bets on an “Election Gambling” site, it is. Similarly, the state statutes that use the term “contest of chance” and that ban wagering on trials or contests “of skill, speed or power of endurance” do not limit “gaming” to wagering on games.³¹ Kalshi cites

³⁰ The Order noted that it is common parlance to refer to elections as “contests.” AR 10 n.25 (citing *Frozen Needle in GOP Contest*, THE WASHINGTON POST, Sept. 3, 2023; *Biden: Dems revitalizing manufacturing*, HOUSTON CHRONICLE, Sept. 10, 2022).

³¹ For example, Kalshi cites a state statute, Ala. Code § 13A-12-20, that prohibits staking “something of value upon the outcome of a contest of chance,” which Kalshi claims obviously references only traditional gambling activities. However, Kalshi fails to note that the statute also prohibits wagers on “*a future contingent event not under his control or influence*,” which would plainly cover betting on elections (though the basis given in the Commission’s Order is narrower than that). Ala. Code § 13A-12-20(4) (emphasis added).

other statutes that define “gambling” to include wagering on “games,” but those definitions also include wagering on “contests” and not just “contests of chance.” Kalshi Motion at 29 (citing La. Stat. § 14:90(A)(1)(a); Ky. Rev. Stat. § 528.010(6)(a); Utah Code Ann. § 76-10-1101(a)).

Though elections are plainly considered contests ordinarily, Kalshi further claims that the term “contests” in the state statutes do not include elections because those statutes use the term to reach events that are not games but share similar attributes, such as horseraces. Kalshi argues that under the canon of *noscitur a sociis*, in which words grouped in a list should be given related meanings, the terms alongside “contest” in these statutes, such as “game” or “gaming scheme,” demonstrate that it should be limited to competitions staged purely for entertainment and to facilitate betting. The canon of *noscitur a sociis* “requires some context cues indicating that the statutory text should be limited by its company.” *United States v. Fischer*, 64 F.4th 329, 346 (D.C. Cir. 2023). Here, the connections between the broadly worded terms accompanying “contest” in the state statutes are “not so tight or so self-evident” to preclude the ordinary meaning of the term and, instead, suggest that the terms should be construed broadly. *See Graham Cty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 288 (2010). Kalshi fails to provide any other context cues that indicate that the meaning of “contest” should be artificially limited to exclude elections and, thus, this argument fails.

Similarly, Kalshi’s argument fails when it cites the Indian Gaming Regulatory Act (“IGRA”) to assert that “federal statutes ... use ‘gaming’ to refer to betting on games.” Kalshi Motion at 25. But the language of IGRA undermines this limited view. IGRA defines three classes of “gaming” that are subject to regulation, including two classes that include “social games” and “bingo and card

games,” among other things.³² 25 U.S.C. § 2703(8). But there is a the third, catchall, class that is telling. It captures “all forms of gaming that are not class I gaming or class II gaming,” and does not itself define “gaming.” *Id.* Without a definition of “gaming” in this catchall, the IGRA cannot be read as limiting gaming to betting on games.

4. The Commission arrived at the best interpretation of “gaming” given the statutory context.

The Commission’s interpretation of “gaming” makes sense within the context of Section 5(c)(5)(C). The Commission’s interpretation is proper when reviewed “not only by reference to the language itself” but also “the specific context in which th[e] language is used, and the broader context of the statute as a whole.” *Am. Coal Co. v. Fed. Mine Safety & Health Rev. Comm’n*, 796 F.3d 18, 26 (D.C. Cir. 2015); *see also United States v. Wilson*, 290 F.3d 347, 355 (D.C. Cir. 2002) (noting statutory provisions are construed “to ‘make sense’ in combination”); *Am. Min. Cong. v. EPA*, 824 F.2d 1177, 1187 (D.C. Cir. 1987) (requiring courts to “read statutes as a whole” rather than “construe phrases in isolation”).

A review of Section 5(c)(5)(C), including the complete list of the enumerated activities, confirms Congress’s intent to provide broad authority to the Commission to prohibit event contracts that the Commission determines are contrary to the public interest. As to “gaming” specifically, Congress used broad language that “should be given broad, sweeping application.” *Nat’l Cable & Telecomms. Ass’n v. FCC*, 567 F.3d 659, 664 (D.C. Cir. 2009). Had Congress intended to further narrow the Commission’s authority to review event contracts involving sports or games of chance, it could have included more limiting language. *See Bldg. Owners & Managers Ass’n Int’l*, 254

³² “[C]lass I gaming” is “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations,” 25 U.S.C. § 2703(6); “class II gaming” is “bingo” and “card games” but not “banking card games, including . . . blackjack.” 25 U.S.C. § 2703(7).

F.3d at 95. But it chose not to. Accordingly, the language of Section 5(c)(5)(C) favors the Commission’s inclusive interpretation of “gaming” over Kalshi’s narrow interpretation.

5. Legislative history supports the Commission’s interpretation of “gaming.”

Finally, the legislative history of Section 5(c)(5)(C) supports the Commission’s application of “gaming.” In considering “‘the problem Congress sought to solve’ in enacting the statute in the first place,” *Petit v. U.S. Dep’t of Educ.*, 675 F.3d 769, 782 (D.C. Cir. 2012) (quoting *PDK Labs., Inc. v. DEA*, 362 F.3d 786, 796 (D.C. Cir. 2004)), a colloquy between Senators Feinstein and Lincoln regarding Section 5(c)(5)(C) is instructive. That colloquy confirms the understanding that “gaming” and “gambling” are interchangeable. Senator Lincoln remarked that the provision is intended “‘to assure that the Commission has the power to prevent . . . *gambling* through futures markets” and “‘derivatives contracts” that “‘exist predominately to enable *gambling*.” 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010) (emphases added). When asked by Senator Feinstein about whether the provision would give the Commission “‘the power to determine that a contract is a *gaming* contract,” Senator Lincoln confirmed that the intent was to prevent derivatives contracts that “‘enable *gambling*.” *Id.* (emphasis added).

The colloquy also confirms that the scope of activities covered by “gaming” was not intended to be limited to “games of chance,” as Kalshi suggests. In providing examples of covered event contracts, Senator Lincoln included event contracts constructed “‘around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament.” *Id.* at S5907. Any wagers on these competitions would clearly constitute “‘stak[ing] something of value upon the outcome of contests of others” and not “‘games of chance.”

Kalshi argues that the examples offered by Senator Lincoln support its contention that “gaming” includes only betting on contests that are “‘*games*,” but there is no basis to conclude that sports gambling is the *only* gambling Congress meant to cover. And even if that was Senator

Lincoln’s focus, broadly worded statutory prohibitions “often go beyond the principal evil to cover reasonably comparable evils.” *United States v. Fischer*, 64 F.4th 329, 347 (D.C. Cir. 2023) (quoting *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)). Evidence of a specific rationale for the enactment of a broadly worded statute “does not define the outer limits of the statute’s coverage.” *Consumer Elecs. Ass’n v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003) (quoting *New York v. FERC*, 535 U.S. 1, 21 (2002)). Staking something of value on elections is a reasonably comparable activity to betting on sports or other competitions and falls within the scope of “gaming” under Section 5c(c)(5)(C).

C. The Commission correctly concluded that the Congressional Control Contracts involve activity that is unlawful under state law.

Drawing on the ordinary meaning of “involve” to include the definition to “have as an essential feature or consequence,” the Commission found that the Congressional Control Contracts involve wagering on elections, which is unlawful in a number of states. As the Commission observed, wagering on elections is unlawful under 22 state statutes and by common law in 18 states. AR 11-12, n.26, 27. The Commission reasoned that because taking a position in the Congressional Control Contracts means staking something of value on the outcome of contests between electoral candidates, taking a position in the Contracts means wagering on elections. And, accordingly, the Commission found, the Contracts involve unlawful activity because wagering on elections is “an essential feature or consequence of the contracts.”³³ AR 13 n.28.

Kalshi ignores the Commission’s findings and instead argues that the Commission’s reasoning enables states to “ban the trading of event contracts on federally regulated exchanges.”

³³ Kalshi suggests that the Commission relied on the “entail” and “relates closely to” definitions of “involve,” and then asks “What does this even mean?” Kalshi Motion at 32. But, as explained, the Order applied the “essential feature or consequence” definition in determining the contracts involve an activity “unlawful under ... State law.” *See* AR 13 n.28.

Kalshi Motion at 31. But that is not what the Commission said. The Commission expressly recognized its exclusive jurisdiction over event contracts. The Commission agreed that state laws cannot prohibit trading futures on registered exchanges, and that the CEA preempts state law to the contrary. There are such state laws on the books, sometimes called “bucket shop” laws, but those are not the laws on which the Commission based its determination.

The Commission explained in detail why Kalshi’s argument “misses the point,” AR 13 n.28, but Kalshi simply ignores what the Commission said. As the Commission correctly explained (AR 13 n.28): CEA section 2(a)(1) grants the Commission “exclusive jurisdiction” over futures and swaps traded on a DCM. 7 U.S.C. § 2(a)(1). This “preempts the application of state law,” *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980), so transacting these products on a DCM cannot, in and of itself, be an “activity that is unlawful under any ... State law.” On the other hand, these products may still “involve ... activity” that is unlawful under a state law, in the sense, for example, that transactions in the products may “relate closely” to, “entail,” or “have as an essential feature or consequence” an activity that violates state law. *See* Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/involve> (last visited Feb. 23, 2024); Random House College Dictionary 703 (Revised ed. 1979); Riverside University Dictionary 645 (1983). Here, state laws (that are not preempted by the CEA) prohibit wagering on elections. Taking a position in the Congressional Control Contracts would be staking something of value on the outcome of contests between electoral candidates, such that wagering on elections is “an essential feature or consequence” of the contracts. Thus, while transactions in the Congressional Control Contracts on a DCM do not violate, for example, state bucket-shop laws, they nevertheless involve an activity that is unlawful in a number of states—wagering on elections. To permit such transactions on a DCM would undermine important state interests expressed in statutes separate and apart from those applicable to trading on a DCM. Kalshi does not dispute this.

Kalshi nevertheless argues that the Commission’s reasoning threatens to “upend the CEA’s regulatory scheme by empowering state legislatures to dictate the regulation of event contracts.” Kalshi Motion at 31-32. But under the CEA, event contracts are subject to prohibition only if the Commission initiates a discretionary review and determines that the contracts are contrary to public interest. 7 U.S.C. § 5(c)(5)(C)(i)-(ii). As Kalshi admits, Section 5c(c)(5)(C)(i) provides that the Commission “may determine” that the contract is contrary to public interest and therefore subject to prohibition, but there is no requirement that the Commission do so, much less an automatic prohibition that kicks in if a state outlaws an activity. Kalshi Motion at 8 (acknowledging that the Commission “may determine” contracts are contrary to public interest). Thus, the Commission’s reasoning in no way empowers state legislatures to dictate regulation of event contracts.

II. The Commission reasonably determined that the Congressional Control Contracts are contrary to public interest.

Section 5c(c)(5)(C)(i) provides that the Commission “may determine” that event contracts involving an enumerated activity are contrary to public interest and therefore prohibited from being listed or made available for clearing or trading pursuant to Section 5c(c)(5)(C)(ii). During the review of the Contracts, Kalshi conceded the Commission has wide discretion in considering a variety of factors in making the public-interest determination, and Kalshi appears to concede as much in this Court.³⁴ Thus, the arguments before this Court are confined to whether the public interest portion

³⁴ Kalshi appears to admit that the “contrary to public interest” standard is broad, stating that “[n]othing in the CEA suggests the CFTC is *limited* to weighing economic considerations.” Kalshi Motion at 40. Further, a comment Letter submitted by counsel for Kalshi in support of Kalshi’s 2022 Submission states: “I do note, however, that the Commission is not limited to using an economic purpose test for determining whether a contract is within the public interest. That test is found nowhere in the text of Section 5c(c)(5)(C) or Rule 40.11. One reference to the economic purpose test between two Senators in a brief discussion of what would become Section 5c(c)(5)(C) is insufficient to bind the Commission to that test.” AR 137, 3747. Another comment letter of Kalshi’s in support of the 2023 Submission states “Congress wanted the Commission to look at the variety of factors that are discussed in the CEA, its purpose, and the core principles.” AR 1811

of the Commission’s Order was arbitrary and capricious under the rational-connection standard, *i.e.*, that there was “a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43. The Commission’s determination comfortably clears that deferential bar.

In considering whether the Congressional Control Contracts are contrary to the public interest, the Commission considered in detail the proposed contract’s specifications and applied its expertise to evaluate how the relevant contract may work in practice. The Commission determined that the contracts did not meet the economic purpose test and could be subject to manipulation and other deceptive practices that may undermine confidence in elections, election integrity, and would thrust the Commission into a role for which, members of the House of Representatives noted in a comment, the Commission is not equipped or well-suited. *See Bd. of Cty. Comm’rs v. U.S. Dep’t of Transp.*, 955 F.3d 96, 99 (D.C. Cir. 2020) (“Both the Supreme Court and our court have recognized that agencies should be given a wide berth when making predictive judgments . . . that is so because such predictions are policy-laden, and courts are not well equipped to second-guess agency estimates, especially where those estimates fall within the field of an agency’s expertise.”); AR 2723-26. The Commission also engaged with the comments supporting and opposing the contracts, considering all important aspects of the problem, as required. *CBOE Futures Exch.*, 77 F.4th at 977. *See, e.g.*, AR 15-16, 19, 20 n.37-38, 21-22 (discussing comments and research).

Kalshi’s arguments merely amount to a “difference in view” for how the Commission should have evaluated whether the Congressional Contract Contracts were against the public interest and

n.82. Even Kalshi’s motion notes that insisting on some economic purpose “is sensible.” Kalshi Motion at 35.

By contrast, Amicus Aristotle argues that the CFTC acted in a way that was manifestly contrary to the statute by using the economic purpose test. However, Aristotle cannot expand the scope of this appeal. *See Met Life v. Fin. Stability Oversight Counsel*, 865 F.3d 661, 666 n.4 (D.C. Cir. 2017) (“Nor may amici expand an appeals scope to sweep in issues that a party has waived.”). In any event, for the reasons given, the Commission validly applied the economic purpose test as part of its broader public interest analysis.

do not demonstrate that the Commission's Order was arbitrary and capricious. *Baystate Franklin Med. Ctr. v. Azar*, 950 F.3d 84, 89 (D.C. Cir. 2020). The arbitrary and capricious standard is narrow; courts refuse to substitute their judgment for the agency's and will accept the decision as long as the agency has provided a reasonable explanation. *Id.* A court's review is especially deferential when, as here, "the decision under review requires expert policy judgment of a technical, complex, and dynamic subject" and involves "matters implicating predictive judgments." *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1105 (D.C. Cir. 2009).

A. Kalshi incorrectly relies on rulemaking cases and mischaracterizes the Commission Order in arguing that the Commission's public interest analysis was arbitrary and capricious.

In challenging the Commission's public interest analysis, and specifically the economic purpose determination, Kalshi relies almost exclusively on rulemaking cases to argue that the Commission engaged in "textbook arbitrary-and-capricious reasoning." Kalshi Motion at 34, 39. Kalshi contends that the Commission did not "meaningfully address comments and evidence," "disregarded evidence" in "assessing the economic utility of Kalshi's contracts," "ignored record evidence of non-economic benefits," "ignor[ed] the contrary record material," and "refused to engage with the commenters' points and evidence." Kalshi Motion 34, 39. But Kalshi's attempt at legal support is a blunder because the Commission's Order is not a rulemaking. It is an informal adjudication which is a distinct administrative procedure. As explained above, in adjudicating Kalshi's two product submissions, the Commission was not required to include "an exhaustive analysis of the record" or "cite or explain its reasoning as to every piece of evidence that could be read to run contrary to its determination," *Concert Inv., LLC*, 616 F. Supp. 3d at 33. Rather, it was sufficient to do just what the agency did: "engage with as much evidence as necessary such that [its] logic can reasonably be discerned." *Id.* (citing *Bowman Transp. Inc. v. Arkansas-Best Freight System*, 419

U.S. 281, 286 (1974)). Because Kalshi relied on the wrong cases, it makes no argument that the Commission did otherwise.

Kalshi's argument also again mischaracterizes the Commission's Order. As discussed below, the Commission properly considered the economic effects of Congressional control and the economic utility of the Contracts, and therefore did not "ignore" relevant data. *See e.g.* AR 15 (noting "the Commission has considered comments from Kalshi and others that state that Congressional control impacts a wide variety of assets and cash flows"); AR 16 (noting that the Commission considered "detailed examples ... attempting to predict broad-ranging economic impacts of various political outcomes" and assertions about the Contracts "hedging purpose").

B. The Commission's application of the economic purpose test was not arbitrary or capricious.

The Commission's use of the economic purpose test, as well as its consideration of other factors in evaluating whether a Contract is contrary to the public interest, was appropriate under the text of the statute and its legislative history.

As the Commission explained, AR 14, consideration of the public interest in hedging and managing price risks stems from the text of the CEA, 7 U.S.C. § 5, which states that the transactions subject to this Act are "affected with a national public interest by providing a means for managing and assuming price risks, discovery prices, or disseminating pricing information through trading in liquid, fair and financially secure markets." Thus, as the Commission noted, the Act "recognizes hedging—and, in particular, price hedging (the 'managing [of] price risks')"—is the "public interest that transactions subject to the CEA are intended to serve." AR 14. Kalshi does not challenge this, and it was entirely reasonable for the Commission to apply an economic purpose test that relies on those factors.

The Commission's decision was also rationally based on the history of the statute. As discussed above, during the era in which registered exchanges were required to satisfy the economic

purpose test for every new contract before it could be listed for trading, the test asked “whether [a] contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis.” 17 C.F.R. § 5, Appendix A- Guideline No. 1 (repealed 2001).³⁵ Critically, the test historically was not whether there was *any* existing or *potential* hedging or price-basing use for a contract. Rather, it asked if that use was “more than occasional.” *Id.* Congress repealed that historical test, but then when discussing the Special Rule on Senate floor, Senator Feinstein noted it was “very important to restore CFTC’s authority to prevent trading that is contrary to the public interest.” She summarized the history, with the CFTC being required to prevent trading in futures contracts that were “contrary to the public interest” from 1974 to 2000 and how in 2000 Congress took away this authority. She then stated a hope that Senator Lincoln’s intent was “to define ‘public interest’ broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest...” Senator Lincoln responded affirmatively. *See* 156 Cong. Rec. S5906-07, 2010 WL 2788026 (daily ed. July 15, 2010) (emphasis added). As the Commission explained, this is further evidence that an economic purpose test should apply. Indeed, Kalshi here admits that insisting on some economic purpose “is sensible.” Kalshi Motion at 35.

Thus, the Commission properly considered the Congressional Control Contracts’ hedging and price-basing utility, including whether the contracts were predominantly speculative or would be used for hedging on more than an occasional basis. AR 19. That Kalshi or other commenters “might have chosen a different” economic test or factors to consider “is of no moment so long as

³⁵ Appendix A may be found in the various adopting releases, *See, e.g.*, Economic and Public Interest Requirements for Contract Market Designation, 47 Fed. Reg. 49,832, 49,839 (Nov. 3, 1982); Economic and Public Interest Requirements for Contract Market Designation, 64 Fed. Reg. 29,217, 29,222 (June 1, 1999).

the [Commission's] decision was justifiable and clearly articulated," which here, it was. *In re Polar Bear Endangered Species Act Listing*, 709 F.3d 1, 16 (D.C. Cir. 2013).

C. The Commission reasonably determined that the Congressional Control Contracts did not have a sufficient economic purpose for purposes of the CEA.

Examining the Contracts' economic purpose, the Commission determined that the Congressional Control Contracts could not reasonably be expected to be used either for hedging or price basing on more than an occasional basis, or predominantly by market participants having a commercial or hedging interest. AR 19. This determination is supported by the Commission's findings that: (i) control of a chamber of Congress itself has no sufficiently direct, predictable, or quantifiable economic consequences; (ii) any eventual effects that Kalshi and commenters cited were diffuse and unpredictable; and (iii) the economics and structure of the transactions limit their utility as a vehicle for hedging. The Commission's explanation was rational and supported by the facts. The APA and CEA require no more.

Kalshi does not challenge the Commission's factual findings that the features of the Contracts undermine them as hedging and price-basing tools. As the Commission observed, the Congressional Control Contracts result, upon settlement, in a payout of \$1 or \$0, per contract, only once every two years (coinciding with the election cycle). And, unlike many hedging and risk management contracts, the payout on the Contracts is not in any way tied to actual or estimated losses incurred elsewhere, and a loss on the Contracts is not offset by a gain elsewhere. Thus, the Commission concluded, the binary payout and frequency of settlement of the Contracts limit their utility as a vehicle for hedging eventual economic effects resulting from which party controls Congress.

Kalshi asserts that the Commission's application of the economic purpose test amounted to "arbitrarily heightened standard," alleging that the Commission incorrectly required that Kalshi demonstrate "direct economic effects" of control of a chamber of Congress. Kalshi Motion at 16-

18. This is not true. In considering hedging utility, the Commission examined whether there were *any* economic effects of control of one chamber of Congress, including indirect effects advanced by Kalshi and commenters, that the Contracts might be used to hedge. At the outset, the Commission made the common sense point that control of one chamber did not, itself, have “sufficiently direct, predictable, or quantifiable economic consequences.” AR 15. The Commission then turned to eventual (*i.e.* indirect) effects that Kalshi and the commenters cited. AR 16. The Commission determined such effects were too “diffuse and unpredictable” to establish a specific identifiable hedging or price-basing purpose for the Contracts, on more than an occasional basis. AR 15-16.

As the Commission observed, the eventual economic effects were related to *potential* legislative policy changes. The Commission acknowledged that the likelihood of adoption of a given policy may increase or decrease based on control of a single chamber of Congress, but reasonably observed that “many intervening events and variables exist between control of a chamber of Congress and the actual implementation of such a policy.” AR 16. This is because, as the Commission noted, there are several steps required to enact and implement legislation, the likelihood of which does not depend on control of a chamber of Congress alone. AR 16-17. Implementation also depends on, for example, whether a party controls one or both chambers, the size of its majority, the votes by individual party members, and the political affiliation of the president, among other factors. AR 16 n.34. Thus, the Commission reasonably concluded, the cited potential economic effects of control of a single chamber of Congress were insufficient to demonstrate that the Contracts had a specific, identifiable hedging purpose or that they could be used to establish commercial transaction prices, as necessary to satisfy the economic purpose test.

Kalshi points to a handful of examples of possible hedging.³⁶ As a threshold matter, many of these do not relate to the Congressional Control Contracts at all—they relate to other forms of theoretical political risk. Kalshi argues that JPMorgan projected that “Democratic victory in the 2020 election would boost the prices of ... ‘China-exposed stocks’ and ‘renewables’” and “[s]ure enough, the Democratic Party’s Senate takeover did trigger a large rally in the green-energy sector.” Kalshi Motion at 38. Yet, the JPMorgan projection that Kalshi cites is about the presidential election, as the title of the cited Bloomberg article suggests—JPMorgan Says *Biden* Victory Could Mark a Stock Market Shift. *See* Kalshi Motion at 38 (citing AR 2991 n.8) (emphasis added)). It should go without saying that the President’s control over the executive branch may involve different issues than the partisan composition of Congress. But, more fundamentally, nowhere does Kalshi engage with the question of whether that hedging function would be its “predominant use” or whether the identified hedging function could be reasonably expected to be used on “more than an occasional basis,” when all indications are, as common-sense and new stories on Kalshi’s own website dictate, the proposed markets are simply a form of “Election Gambling.”

To resist the obvious, Kalshi points to a hypothetical “consulting firm with deep ties to one party” whose business would be “directly harm[ed]” by “Congressional control by the other party.” Kalshi Motion at 38. Kalshi argues that the Congressional Control Contracts could be used by the hypothetical firm to hedge this risk and by others to determine the firm’s value. *Id.* Kalshi neither quantifies these hypothetical effects nor demonstrates how they would support more than occasional hedging or price-basing utility, which on their face they could not. And Kalshi’s own

³⁶ Notably, many of Kalshi’s arguments cite “control of Congress” as opposed to control of one chamber of Congress. For example, Kalshi refers to “partisan control of Congress,” Kalshi Motion at 35, “control of Congress,” *Id.* at 36, “if Republicans take control of Congress in 2024,” *Id.* at 37, “Congressional control,” *Id.* at 38. Other arguments refer to the party affiliation of the president, such as the effect of President Bush’s election on the value of tobacco companies, *Id.* at 38-39, and JP Morgan’s 2020 projection for green energy with a Biden win, *Id.* at 38 (citing AR 2991).

2022 Submission undermines any assertion of a hypothetical hedging need because, it notes, political consulting firms “are careful to bill themselves as bi-partisan” in light of the importance of political connections to their business. AR 3001 at n.42. Nevertheless, even if the consulting firm Kalshi describes were rooted in fact, it would do nothing to undermine the Commission’s rational judgment that the Contracts are predominantly for gambling, not hedging.

Kalshi also cites examples of “specific assets whose value is directly linked to partisan control” to argue that Congressional control has predictable effects on equity prices. But Kalshi’s examples are observations of isolated movements in stock prices or firm valuations, not predictable patterns or repeated occurrences of economic effects in any particular asset price. And as noted above, the Contracts only apply to control of a single chamber of Congress. Kalshi does not point to *any* particular commercial transaction price that would be based on or include the price of the Congressional Control Contracts to support an argument the Contracts would serve a price-basing function. Nor does the record support such a finding. For these reasons, Kalshi has not demonstrated that there is a frequency of movement in any asset that could support more than occasional hedging or price basing, even if some of the price movements Kalshi cites could be tied to an election result.

D. The Commission was not arbitrary and capricious in addressing comments.

Finally, Kalshi argues that the Commission was arbitrary and capricious because it “refused to engage” with commenters who provided “probative and compelling evidence of the contracts’ hedging purpose.” Kalshi Motion at 39. But as discussed above, Kalshi’s argument in this regard is based on a research mistake: Kalshi relies almost entirely on cases addressing the APA’s requirements for rulemaking, not informal adjudication. Contrary to Kalshi’s suggestion, the Commission was not required to specifically respond to each and every comment that might be

construed as contrary to its position.³⁷ See *Concert Inv., LLC*, 616 F. Supp. 3d 25 at 33. And, in any event, as the Order indicates, the Commission did consider comments from Kalshi and others about the eventual economic effects of Congressional control and the purported hedging and price-basing utility of the Contracts. See AR 15-16. The comments that Kalshi specifically cites identify potential policy changes that might affect various industries.³⁸ But these comments cannot overcome the reasonableness of the Commission's conclusion that eventual economic effects of Congressional control in the form of potential policy changes are simply too diffuse and unpredictable to support a finding of hedging and price-basing utility sufficient to demonstrate a true economic purpose.

E. The Commission reasonably determined that the Contracts could potentially be used in ways that would have an adverse effect on election integrity, or the perception of election integrity, and could put the Commission in the position of investigating election-related activities.

The Commission's focus on real and perceived election integrity and the Commission's potential role in policing election-related activities, including misinformation, was reasonable. As the Commission noted, the record included studies regarding the potential for, and examples of, such manipulation. AR 22 n.39. Moreover, the Commission reasonably explained how the lack of an underlying cash market for the Contracts, and the opaque and unregulated sources of price forming information of the Contracts, may increase the risk of manipulative activity relating to the Contracts, while decreasing Kalshi's or the Commission's ability to detect such activity. AR 21. Again,

³⁷ Even in notice and comment rulemaking, the agency need only respond to "significant points raised by the public," and "an agency's failure to address a particular comment or category of comments is not an APA violation *per se*." *Sherley v. Sebelius*, 689 F.3d 776, 784 (D.C. Cir. 2012).

³⁸ The commenters claim, for example, that they would hedge against: (1) a change in legal status of cannabinoids (AR 1348, AR 1613); (2) changes to tax policy that could affect business operations (AR1375-76, AR 1391, AR 1533); (3) changes to green energy policies that could affect the valuation of a green energy business and the ability to attract talent or investors in the business (AR 1386, AR 1597); and change to immigration policies that might also affect ability to attract talent to tech businesses (AR 1391, 1533). Even taken together, the Commission rationally determined that hedging would not take place on more than an occasional basis.

“common-sense determination[s]” such as these “pass[] muster, particularly in an informal adjudication.” *Phoenix Herpetological Soc’y*, 998 F.3d at 1005.

Kalshi’s argument that the record did not include data on the potential for manipulation misreads the record. For instance, the Commission cited a law review article detailing examples of “fake polls” and how they had consequences in corresponding event contracts. AR 22 n.39.³⁹ And even the economists that Kalshi cites admitted that manipulation attempts *can* have a discernible effect on prices “during a short transition phase.” AR 1449-1450; AR 1751 (noting price pump attempts were “short-lived”); AR 1404 (“As Hanson and Opera (2009) correctly argue, manipulation encourages entry to trade against it. *In the long run*, this improves liquidity and accuracy of prices. Moreover...past suspected episodes of manipulation have involved *relatively quick* reversion of prices”) (emphases added); AR 1434 (discussing the phenomenon of “fake polls” used to manipulate a particular event-contract market, including an example regarding a fake poll affecting a re-election contract for Senator Stabenow, and stating “market motivations may have been secondary to the trolling factor, but the mere fact that the markets can be so easily manipulated is noteworthy” and citing a paper with “many more examples”).⁴⁰ The Order further observes that several commenters noted specific examples of manipulation or attempts in election markets and that other commenters “downplayed these incidents.” AR 20 n.38. In any event, the Commission “need not suffer the flood before building the levee.” *Stilwell v. Office of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009) (Kavanaugh, J.).

³⁹ The Commission received a number of comments on expressing a concern the contracts could be manipulated, including from six Senators, AR 2816-17, Sen. Klobuchar, AR 2818, Representatives Sarbanes and Raskin, AR 2273-76, Undergraduate researchers at Duke University, AR 159-182, Better Markets, AR 1889-1910, the Center for American Progress, AR 2260-61, Campaign for Accountability, AR 2258-59, Public Citizen, AR 222-225.

⁴⁰ The Commission also cited the same research, AR 22 n.39, and thus, contrary to Kalshi’s contention, the Commission order does provide “real-world examples.” Kalshi Motion at 52.

Kalshi appears to be suggesting that the only appropriate focus is long-term manipulative activity. However, short-term manipulations can be profoundly damaging to market participants. *See, e.g., CFTC v. McAfee*, No. 21-cv-1919 (JGK), 2022 WL 3969757 (S.D.N.Y. July 14, 2022) (consent order) (illegal pump-and-dump scheme of virtual currency). And the effects can occur in more than just the manipulated market. If timed correctly, such manipulative conduct could affect fundraising efforts around the end of a reporting period, or turnout during early voting, among other things. Now, consider a viral “deep fake” video of a partisan leader in Congress made to look like said person was involved in serious crime. Such a video—even though false—could have at least a short-term effect on the price of the contract, and the Commission could find itself investigating its release. Finally, a group of supporters of a political party, or even a foreign power, could organize around a misinformation campaign, and make money off of their campaign by timing their purchase and sale of the Contracts.⁴¹ Short-term manipulations could also have serious effects on the public perception of election integrity. All of the above examples could, as the Commission observed, undermine confidence in the electoral process. *See* AR 19-20 (noting over 600 comments, including from United States Senators, expressing concern about the potential impact of the Contracts on election integrity and the perception of election integrity).

Contrary to Kalshi’s argument, the Commission’s consideration that the Contracts may create monetary incentives to vote for particular candidates was not “outside the bounds of reasoned decision making.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009). The contracts on their face create monetary incentives related to the election—up to as much as

⁴¹ Kalshi has not proposed prohibiting foreign entities or members of the media from trading. AR 22, 33-34. The Commission noted that groups of individuals who were not prohibited from trading but may have an incentive to create a false impression included, for example, Congressional campaign volunteers, consultants to Congressional campaigns, or donors or other supporters of political parties or individual Congressional candidates. AR 22 n.40.

\$100,000,000. AR. 32-33. Plenty of eligible voters do not cast ballots in each election, and not everyone who does feels equally strongly about their candidate of choice—there is nothing unreasonable in the common-sense determination that monetary incentives may have an impact on at least some voters, acting individually or, more disturbingly, as part of an organized group.⁴²

Phoenix Herpetological Society, 998 F.3d at 1006.

To prop up the argument that their contracts would not easily be manipulated, Kalshi argues that “listing contracts on federally regulated exchanges like Kalshi’s would *ameliorate* manipulation concerns.” Kalshi Motion at 42; *see also* Aristotle Amicus brief at 15 (calling attempts to manipulate the market “profit opportunities”); Grundfest Amicus brief at 17 (arguing price “pump” attempts are short-lived and “disciplined by the market’s self-correcting mechanisms”⁴³). This argument is based on the idea that the market will correct itself over a period of time, but that does not change the possibility that the market could still be subject to short-term manipulative activity, which could affect at least the perception of election integrity. Further, it also appears that Kalshi is arguing that for these contracts, it is better for “the house” to be regulated by the CFTC than a gaming commission.⁴⁴ But that argument goes to the heart of the Commission’s concern about its role in

⁴² Kalshi argues the Commission’s determination on this is not “credible” and “utterly implausible,” but the Commission cited Tyler Yeargain, *Fake Polls, Real Consequences: The Rise of Fake Polls and the Case for Criminal Liability*, 85 MISSOURI L. REV. 129 (2020). AR 22 n.39. That article details events that occurred on a market with a trading limit of \$850 per contract, a limit that is well below Kalshi’s proposed limits. The incentive for wrongdoing in connection with Kalshi’s Contracts is orders of magnitude greater.

⁴³ Professor Grundfest’s brief does not consider that a wrong-doer may profit by short-term price manipulation events, regardless of whether the market eventually self-corrects. *See, e.g., In re JPMorgan Chase & Co.*, CFTC No. 20-69, 2020 WL 5876730 (Sep. 29, 2020) (manipulation and spoofing in the precious metals futures market and the U.S. Treasury futures market).

⁴⁴ Kalshi also inexplicably seems to analogize CFTC-regulated derivatives markets to overseas gambling markets, in arguing that creating a financial instrument, regulated by a derivatives regulator, would not affect the legitimacy of the elections. Specifically, Kalshi argues that no one questions the legitimacy of the election of Margaret Thatcher or Tony Blair, notwithstanding the existence of the UK gambling markets. First of all, even if true, Prime Ministers Thatcher and Blair last stood for

investigating elections. If Congressional Control Contracts are traded on a Commission-regulated DCM, the concerns about manipulations will belong to the Commission—and without underlying cash markets that allow the Commission to verify real-time prices are behaving as expected, but instead with opaque, unregulated sources of pricing information for the contracts which may not follow scientifically reliable methodologies. AR 21. Thus, to determine manipulation the Commission might have to investigate aspects of the electioneering process itself.

Kalshi argues that the Commission “ignored” evidence that the Contracts could give societally valuable data.⁴⁵ However, the Commission stated in its Order that it considered the argument the Contracts could provide “a check on misinformation and inaccurate polling,” but also noted the research suggesting that election markets “may incentivize the creation of ‘fake’ unreliable information in the interest of moving the market” and that, for example, certain individuals and entities who would not, by the terms of the Contracts be permitted to trade them, such as paid employees of political campaigns could nonetheless engage in other activity “intended to create the impression of likely electoral success or failure on the part of a particular political candidate or candidates – that could artificially move the market in the Congressional Control Contracts.” AR

election in 1987 and 2005, respectively. By contrast, conspiracy theories abound concerning the 2016 Brexit vote. And, importantly, the UK derivatives markets are overseen by the Financial Conduct Authority or Prudential Regulation Authority, and those authorities will prosecute manipulation in those markets, but betting on prime ministers is separate. Those markets are regulated by the UK Gambling Commission, which does not have any requirement that a betting line be a vehicle of price discovery. *See, e.g.* U.K. Gambling Commission, *License Conditions and Code of Practice* (Jan. 31, 2024), <https://www.gamblingcommission.gov.uk/licensees-and-businesses/lccp/print>. In fact, two different licensees could offer different odds on the same event, without raising any concern at all. Thus, if a gambling market were to inaccurately predict the outcome of an election, such as Brexit—which the betting markets predicted would be a “remain” vote—the effect on the electorate’s confidence should logically be minimal.

⁴⁵ Kalshi also argues, wrongly, that “most commenters attested to the economic informational value of political event contracts generally and the Congressional Control Contracts specifically.” Kalshi Motion at 11. However, more than 600 of the commenters, including members of Congress, researchers, non-profits, institutions, and ordinary citizens expressed opposition to the contracts. AR 19.

21-22. The Commission’s conclusion that election integrity concerns (including public perception of election integrity) outweighed the potential for valuable data is reasonable and within the Commission’s discretion. Because “the available data does not settle a regulatory issue and the agency must then exercise its judgment in moving from the facts and probabilities on the record to a policy conclusion,” the Commission need only show a “rational connection between the facts found and the choice made.” *Verizon v. FCC*, 740 F.3d 623, 649 (D.C. Cir. 2014) (quoting *Motor Vehicle Mfrs. Ass’n of US v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)); compare *CBOE Futures Exch.*, 77 F.4th at 980 (requiring the SEC to provide a statement of reasoning rather than a mere conclusion), with *Crooks v. Mabus*, 845 F.3d 412, 424 (D.C. Cir. 2016) (stating agency did not need to “explain away every point raised”). Here, it did so.

Moreover, the potential for short term manipulations of these contracts undercuts Kalshi’s argument that the contracts are valuable based on their ability to produce “up-to-the-minute assessments.” AR 1495, AR 1550 (discussing a market that can react immediately); AR 1404 (use of event markets in tracking news events). Kalshi cannot have it both ways: If the data is valuable *because* of the short-term, immediate information, its likelihood to succumb to short-term manipulations—which cannot be independently assessed as either manipulation or legitimate price movements by reference to an underlying market—devalues the reliability of that data.

Finally, Kalshi advances an argument that the Commission would not be required to police election-related activity because other agencies “already shoulder the critical responsibility of ensuring that our elections are free and secure.” Kalshi Motion at 54. This misses the point. The Commission has the responsibility to address fraud and manipulation in markets for derivatives contracts that trade on Commission regulated exchanges that other government bodies lack. 7 U.S.C. § 9(c). Further, the fact that another federal regulator may have jurisdiction over an underlying product does not alter the Commission’s obligation to ensure integrity in its markets.

Sophisticated commenters, such as the Chicago Mercantile Exchange (a large DCM) and members of Congress underlined this very concern. AR 1912-13 (noting that were the Contracts designated, the Commission would be required to police for fraud in a political election underlying a contract and asking “Do any of us really believe that Congress intended for the CFTC to play this role in the electoral process?”); AR 2273-75 (outlining “serious concerns about the misalignment of [an election cop] role with the CFTC’s historic mission and mandate as established by Congress). And while commodities outside the Commission’s direct remit do underlie derivatives without giving rise to significant problems, elections obviously play a special role in our society such that it was rational for the Commission to determine that the public interest favors keeping the CFTC out of any oversight role. Indeed, the examples Kalshi cites of products based on underlying commodities outside of the Commission’s jurisdiction are each economic in nature.

The Commission adequately explained that it had considered the non-economic reasons for approving the Congressional Control Contracts asserted by Kalshi and public commenters but that they did not outweigh the substantial risks presented by the Contracts. Accordingly, the Commission met its obligation to provide “a statement of reasons [] sufficient to permit a court to discern its rationale” for determining the Congressional Control Contracts were contrary to public interest. *Tourus Recs., Inc. v. DEA*, 259 F.3d 731, 737 (D.C. Cir. 2001) (citing *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)).

Kalshi asks the Court to declare that the Commission was arbitrary and capricious in its refusal to legalize—nationally—election gambling via the derivatives markets governed by the CEA. The Commission’s mission includes to “deter and prevent price manipulation or any other disruptions to market integrity.” 7 U.S.C. § 5(b). Kalshi’s concession that its proposed markets could be affected by short-term spasms of manipulation—thereby damaging ordinary market participants—shows how reasonable the Commission indeed was in considering the potential for

manipulation. With the potential for manipulation, even in short bursts, to have effects outside the contract market, the Commission's concern for election integrity and the perception of election integrity was rational and provided a reasoned foundation for the Commission's concern about its own role in policing election-related activity.

CONCLUSION

For the foregoing reasons, the CFTC respectfully requests that this Court grant the Commission's motion for summary judgment, deny Kalshi's motion for summary judgment, enter judgment in favor of the CFTC and against Kalshi on all claims, and order any other relief that this Court determines is appropriate.

Dated: February 26, 2024

Respectfully submitted,

/s/ Raagnee Beri

Raagnee Beri

Senior Assistant General Counsel

Robert A. Schwartz

General Counsel

Anne W. Stukes

Deputy General Counsel

Margaret P. Aisenbrey

Senior Assistant General Counsel

Conor B. Daly

Counsel

Commodity Futures Trading Commission

1155 21st Street, NW

Washington, D.C. 20581-0001

Phone: (202) 418-5986

rberi@cftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, I served the foregoing on counsel of record using this Court's CM/ECF system.

/s/ Raagnee Beri

Raagnee Beri

Senior Assistant General Counsel

Commodity Futures Trading Commission

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

No. 23-cv-03257-JMC

Reply in Support of Motion for
Summary Judgment and
Opposition to Cross-Motion for
Summary Judgment

**REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO DEFENDANT'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Yaakov M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar 90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

Amanda K. Rice (D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue, Suite 2100
Detroit, MI 48226
(313) 733-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

*admitted *pro hac vice*

*Counsel for Plaintiff
KalshiEx LLC*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	4
I. THE CFTC IS WRONG ABOUT WHAT IT MEANS FOR AN EVENT CONTRACT TO “INVOLVE” AN ENUMERATED ACTIVITY.....	4
A. “Involve” Connects Enumerated Activities with Underlying Events, Not with the Actions of Traders.	4
B. The CFTC’s Attacks on Kalshi’s Reading Fail.	11
II. THE CFTC’S READING OF THE ENUMERATED ACTIVITIES IS UNTENABLE.	13
A. “Gaming” Requires a Game.....	13
B. “Unlawful Activity” Requires Unlawful Activity.	19
III. THE ORDER’S PUBLIC-INTEREST DETERMINATION IS ARBITRARY AND CAPRICIOUS.	22
A. The CFTC Misleads on the Standard of Review.	22
B. The CFTC’s Arguments about “Economic Effects” Are Meritless.	23
C. The Commission Does Not Meaningfully Engage with the Non-Economic Benefits the Order Ignored.....	28
D. Speculation about Election Integrity Cannot Save the Order’s Public-Interest Determination.....	29
CONCLUSION.....	32

TABLE OF AUTHORITIES

Page

CASES

Am. Agric. Movement, Inc. v. Bd. of Trade,
977 F.2d 1147 (7th Cir. 1992) 19

Bankamerica Corp. v. United States,
462 U.S. 122 (1983) 7

Bd. of Trade v. Christie Grain & Stock Co.,
198 U.S. 236 (1905) 19

**Butte County v. Hogen*,
613 F.3d 190 (D.C. Cir. 2010) 22, 23, 28

Citizens to Pres. Overton Park, Inc. v. Volpe,
401 U.S. 402 (1971) 22

**Clark County v. FAA*,
522 F.3d 437 (D.C. Cir. 2008) 22, 23, 28, 30

Clark v. Martinez,
543 U.S. 371 (2005) 7

Concert Inv., LLC v. Small Bus. Admin.,
616 F. Supp. 3d 25 (D.D.C. 2022) 23

Dr Pepper/Seven-Up Cos. v. FTC,
991 F.2d 859 (D.C. Cir. 1993) 22

Getty v. Fed. Sav. & Loan Ins. Corp.,
805 F.2d 1050 (D.C. Cir. 1986)..... 29

Moreau v. Klevenhagen,
508 U.S. 22 (1993) 19

**Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*,
463 U.S. 29 (1983) 22

Neustar, Inc. v. FCC,
857 F.3d 886 (D.C. Cir. 2017) 23

Petit v. U.S. Dep’t of Educ.,
675 F.3d 769 (D.C. Cir. 2012) 21

**Ratzlaf v. United States*,
510 U.S. 135 (1994) 7, 12

Reno v. Bossier Par. Sch. Bd.,
528 U.S. 320 (2000) 7

SEC v. Chenery Corp.,
332 U.S. 194 (1947) 30

Tex. Mun. Power Agency v. EPA,
89 F.3d 858 (D.C. Cir. 1996) 12

United States ex rel. Polansky v. Exec. Health Res., Inc.,
599 U.S. 419 (2023) 10

United States v. Slatten,
865 F.3d 767 (D.C. Cir. 2017) 10

Wash. Ass’n for Television & Child. v. FCC,
712 F.2d 677 (D.C. Cir. 1983) 6

STATUTES

5 U.S.C. § 706..... 22, 23

7 U.S.C. § 7a-2 1, 11, 27

25 U.S.C. § 2703..... 15

Ala. Code § 13A-12-20..... 16

Alaska Stat. Ann. § 11.66.280 16

Ariz. Rev. Stat. § 13-3301 16

Colo. Rev. Stat. Ann.
§ 18-10-102..... 16

§ 44-30-103..... 16

Conn. Gen. Stat. Ann. § 53-278a..... 16

Del. Code Ann. Title 11, § 1403..... 17

Fla. Stat. § 849.14..... 17

Ga. Code Ann. § 16-12-21 17

Haw. Rev. Stat. § 712-1220 16

Idaho Code § 18-3801..... 16

Ill. Comp. Stat. 5/28-1..... 17

Ind. Code § 35-45-5-1 16

Iowa Code § 725.7 16

Kan. Stat. Ann.
 § 21-6403..... 16
 § 21-6404..... 16

Ky. Rev. Stat. § 528.010 18

La. Stat. § 14:90 18

Me. Rev. Stat. Title 17-A § 952 16

Mich. Comp. Laws § 750.301..... 16

Minn. Stat. Ann.
 § 609.75 16
 § 609.755..... 16

Miss. Code Ann.
 § 75-76-5..... 16
 § 97-33-1..... 16

Mo. Rev. Stat. § 572.010 16

Mont. Code Ann. § 23-5-112 16

N.H. Rev. Stat. Ann. § 647:2 16

N.J. Stat. § 2C:37-1..... 16

N.M. Stat. Ann.
 § 30-19-1..... 16
 § 30-19-2..... 16
 § 60-2E-3..... 16

N.Y. Penal Law § 225.00 16, 20

N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1301 16

Neb. Rev. Stat. § 28-1101 16

N.D. Cent. Code Ann. § 12.1-28-01 10, 16

Okla. Stat. Ann. Title 21
 § 981 16
 § 982..... 16

Or. Rev. Stat. § 167.117..... 16

Pub. L. No. 93-463, 88 Stat. 1389 (1974) 10

Pub. L. No. 106-554, 114 Stat. 2763 (2000) 10

Pub. L. No. 111-203, 124 Stat. 1376 (2010) 11

Tenn. Code Ann. § 39-17-501 16

Tex. Penal Code Ann. § 47.02..... 17

Utah Code Ann. § 76-10-1101 18

Va. Code Ann. § 18.2-325..... 16

Wash. Rev. Code § 9.46.0237..... 16

Wis. Stat. Ann.
 § 945.01 16

§ 945.02 16

Wyo. Stat. Ann. § 6-7-101 16

OTHER AUTHORITIES

25 C.F.R. § 502.4 15

156 Cong. Rec. S5907 (daily ed. July 15, 2010) 13

CFTC, *Holding Wrongdoers Accountable*, available at
[https://www.cftc.gov/LawRegulation/
HoldingWrongdoersAccountable](https://www.cftc.gov/LawRegulation/HoldingWrongdoersAccountable)..... 31

CFTC, *CFTC Issues Order Prohibiting North American Derivatives
Exchange's Political Event Derivatives Contracts* (Apr. 2, 2012),
available at <https://www.cftc.gov/PressRoom/PressReleases/6224-12> 25

Mersinger Dissenting Statement, CFTC.gov (Sept. 22, 2023), available
at [https://www.cftc.gov/PressRoom/SpeechesTestimony/
mersingerstatement092223](https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092223) 31

INTRODUCTION

The CEA empowers the CFTC to review—and potentially prohibit—an event contract *only* if the contract “involves” one of five enumerated activities. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i). Elections are not one of them. That should end this case. Because Kalshi’s Congressional Control Contracts turn on the outcomes of federal elections—events wholly unrelated to illegal activity, terrorism, assassination, war, or gaming—they do not trigger CFTC scrutiny. In nevertheless barring Kalshi from listing them, the Commission exceeded its statutory authority and flouted the APA’s guarantee of reasoned decision-making. And in arguing otherwise in its response brief (ECF 30, “CFTC Br.”), the Commission advances arguments that are, if anything, even less coherent than those in its Order. Neither the brief’s length nor its volume of footnotes can conceal its lack of substance on the key, controlling issues in this case.

First, the Commission fundamentally misunderstands what the statute means when it refers to event contracts that “involve” the enumerated activities. The CFTC acknowledges that, for most of the enumerated activities, the question is whether the contract’s *underlying event* “involves” the activity. But for “gaming” and “unlawful activity”—and only for those activities—the Commission insists the question becomes whether *trading the contract* “involves” the activity. Those are two totally different inquiries. The Commission identifies no other statute that employs language in such a shape-shifting way—using a single term in a single sentence to repeatedly toggle back and forth between two different subjects. This reading flies in the face of basic interpretive principles and also upends the basic structure of the scheme.

Second, the Commission’s initial wrong turn forces it down other blind alleys. It claims that buying or selling Kalshi’s contracts involves “gaming.” But there is no “game” here—only real-world events with real economic impacts. Nor can the CFTC construe “gaming” broadly to mean all “gambling”—*i.e.*, staking something of value on a contingency—since that would sweep in *all* event contracts, making nonsense of the statutory enumeration. The Commission admits as much. Attempting to steer between that Scylla and Charybdis, it gerrymanders a novel definition of “gaming” to cover wagers on games *or contests*, but nothing else. The Commission cannot and does not explain, however, why that neither-here-nor-there interpretation is the best reflection of congressional intent—as opposed to the best way to ensnare Kalshi’s contracts, which appears to be the Commission’s sole objective. And the games-or-contests construction fails even on that score, since elections are plainly *not* “contests” under the state gambling statutes upon which the Commission rests.

The CFTC’s attempt to condemn Kalshi’s contracts as involving “unlawful activity” requires even stranger contortions. It argues that this category is implicated because some States prohibit betting on elections. But, as the Order itself observed, many States ban *all* wagering on contingencies. On the Commission’s logic, *every* event contract thus “involves” unlawful activity in just the same way as Kalshi’s Congressional Control Contracts do. Despite some nearly unintelligible denials, the Commission effectively admits as much. It thereby turns the statutory scheme on its head and effectively reinstates the across-the-board pre-clearance regime that Congress *repealed* decades ago. That cannot be right.

Finally, the Commission’s efforts to prop up the Order’s public-interest finding fall flat. It is undeniable that elections impact people and businesses. Indeed, hardly any other events matter *as much* as elections do. And if elections matter, the risks associated with them can be hedged. That simple reality is more than enough to align Kalshi’s contracts with the public interest. In its brief, the Commission only doubles down on the Order’s analytical errors. It ignores the mountains of concrete evidence of the contracts’ benefits while repeating irrelevant platitudes about election integrity (which Kalshi wholeheartedly supports) and elevating unfounded bogeyman claims that have no basis in fact.

The Commission tries to hide behind the formality that the Order resulted from an informal adjudication, but that is no excuse for arbitrary and capricious reasoning. The CFTC chose to ask for the public’s input—but then ignored it when the facts did not fit the Commission’s pre-ordained agenda of protecting Wall Street’s monopoly over risk-hedging financial products.

In the end, it is clear that this Court must vacate the Order and permit Kalshi to list the Congressional Control Contracts. To the extent Congress determines that election contracts should be banned, it remains free to add “elections” to the list of enumerated activities that trigger CFTC review. But current law is clear, and the Commission cannot twist or rewrite it to protect an incumbent hegemony. Kalshi is therefore entitled to summary judgment, and respectfully reiterates its request for a ruling to that effect in advance of the next set of federal elections.

ARGUMENT

I. THE CFTC IS WRONG ABOUT WHAT IT MEANS FOR AN EVENT CONTRACT TO “INVOLVE” AN ENUMERATED ACTIVITY.

Under the only consistent, coherent interpretation of the CEA’s event-contract provision, Kalshi’s contracts “involve” neither “gaming” nor “unlawful activity.” At the threshold, that is because the word “involve,” read in its statutory context, links the enumerated activities to a contract’s *event*—not to the *act of trading* it. This event-focused reading makes sense of each enumerated activity and accommodates the statute’s broader structure. Meanwhile, the Commission’s contrary reading—under which “involve” refers to the underlying event for some enumerated activities but to the act of trading for the “gaming” and “unlawful activity” categories—does not fit. No matter how broad, a single statutory term in a single sentence cannot perform two completely different tasks simultaneously. And basic principles of statutory construction confirm that “involve” here must refer to the underlying event, lest *every* event contract be subjected to public-interest scrutiny even after Congress specifically repealed that regime and curtailed the Commission’s review authority.

A. “Involve” Connects Enumerated Activities with Underlying Events, Not with the Actions of Traders.

The Commission never disputes that, for the “terrorism,” “assassination,” and “war” categories, an event contract can “involve” those activities only if its *underlying event* relates to them. And the Commission concedes that the CEA elsewhere uses the term “involve” to do the same work—*i.e.*, to refer to a contract’s underlying. See CFTC Br. 22–23 & n.22. Yet the Commission never suggests that *elections* involve

“gaming” or “unlawful activity”; it argues only that *trading election-based contracts* involves those activities.¹ The CFTC thus turns “involve” into a chameleon. It is utterly implausible that Congress—through a single word—repeatedly shifted the focal point of a crucial statutory inquiry back and forth across five subparagraphs of the same sentence. *See* ECF 17-1 (“Kalshi Br.”) at 16–18. The Commission’s shifting construction conflicts with the consistent-meaning canon and upends the statute’s basic structure. The Court should therefore reject it.

Consistent Meaning. The first obstacle to the Commission’s interpretation is the consistent-meaning canon. Statutory terms have fixed meanings; they do not expand and contract to fit particular applications. The Commission tries to avoid this canon by casting the dispute as hinging on the definition of “involve.” *See* CFTC Br. 22, 25. “Involve,” it insists, means to “relate closely to” or to “entail,” and holds that same broad meaning across “all five enumerated activities.” CFTC Br. 25.

¹ The Commission occasionally disputes that description of its position, but its brief—like the Order—speaks for itself. At every turn, it consults the actions of a hypothetical trader to determine whether an enumerated activity is “involved.” *See, e.g.,* CFTC Br. 11–12 (“because taking a position in” Kalshi’s contracts “would be staking something of value ... upon the outcome of a contest,” they “involve ‘gaming’”), 12 (“taking a position in” these contracts “would be staking something of value (or betting) upon the outcome of [elections], which is illegal in a number of states”), 21 n.18 (these contracts “‘involve’ gaming because an election ‘relates to’ gaming—if you gamble on it”), 22 (these contracts “involve” gaming because “gaming is what these transactions ‘entail’”), 27 (“*taking a position in* the [contracts] is betting or wagering on elections” (emphasis added)), 34 (these contracts “involve” unlawful activity because “taking a position in [them] means wagering on elections”), 35 (similar). Its *amicus* sums up the CFTC’s argument well: Kalshi’s contracts supposedly “involve gaming because entering into [them] means engaging in the activity of ‘gaming.’” ECF 34 (Better Markets Amicus Br.) 5.

That misses the point entirely. The dispute here is not what “involve” *means* in the abstract. Indeed, Kalshi used a nearly identical definition to the one the CFTC presses. *Compare* Kalshi Br. 14, 15 (“constitute” or “relate to”), *with* CFTC Br. 22 (“relate to,” “to entail,” or “to have as an essential feature or consequence”). Instead, the dispute is about what *work* that word performs in the statute—specifically, *to what* must the enumerated activity relate? In other words, this case is not about how closely an underlying event must relate to an enumerated activity to “involve” it; it is about whether it suffices for *trading a contract* to relate to an enumerated activity.²

In answering that question, the Commission concedes that “involve” refers to a contract’s underlying event for *most* of the provision’s enumerated activities—as well as elsewhere in the statute. *See* CFTC Br. 22–23 & n.22; Kalshi Br. 16. That concession guts the Order’s categorical claim that “when the CEA refers to a contract’s underlying, it uses the word ‘underlying,’ or it refers to what the contract is ‘based on’ or ‘based upon.’” Order at 6. And the consistent-meaning canon compels

² The Commission suggests Kalshi has “waived” reliance on the undisputed, ordinary definition of “involve.” CFTC Br. 21 n.18. Nonsense. From the start, Kalshi has raised a binary question of statutory interpretation: Must a contract’s *event* “involve” an enumerated activity, or can the Commission trigger public-interest review by concluding that the *act of trading* the contract would “involve” the activity? *See, e.g.*, AR 110–12; AR 121; AR 3169–70. At every step, Kalshi has advanced the former position and attacked the latter. *See, e.g., id.*; ECF 1 ¶¶ 8, 10, 63–65, 88; Kalshi Br. 15–23. At every step, Kalshi has given the Commission “a fair opportunity to pass on [its] legal ... argument.” *Wash. Ass’n for Television & Child. v. FCC*, 712 F.2d 677, 681 (D.C. Cir. 1983). And at every step, Kalshi has given “involve” its ordinary relational meaning—often using language identical to the Commission’s. Because the parties’ dispute has never been about the scope of relationships captured by the word “involve,” but rather about the *subject and object* of those relationships, Kalshi did not (and could not) “waive” any argument on the former score.

the conclusion that Congress employed the same, event-focused usage of “involve” across *each* enumerated activity. As the Supreme Court has explained, “a *single* [statutory] formulation” must be read “the same way each time it is called into play.” *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). And when one term “applies without differentiation to” a set of defined “categories,” reading it to perform different work as to “each category would ... invent a statute,” not “interpret one.” *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *see also Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 329 (2000) (“refus[ing] to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying”); *Bankamerica Corp. v. United States*, 462 U.S. 122, 129 (1983) (same).

Try as it might, the Commission cannot escape that inconsistency. Again, even accepting that “involve” means “relate to” or “entail,” it would be bizarre for Congress to switch back and forth between two fundamentally different inquiries in rapid succession—asking first whether *trading the contract* entails unlawful activity, then whether the contract’s *underlying event* entails terrorism, assassination, or war, then reverting to inquire whether *trading the contract* entails gaming. The Commission identifies no statutory term that has *ever* been construed that way. It suggests there is no problem because, on its view, “involve” consistently performs one of two possible tasks—either the contract’s underlying is one of the statutory activities, or else the contract has a “different connection” with the activity. CFTC Br. 25 (quoting Order at 7). But that semantic trick would render the consistent-meaning canon meaningless. Defining a term to mean “X or Y” assigns it *two* meanings, not *one*.

To illustrate, revisit the hypothetical in Kalshi’s opening brief involving a theater policy requiring parents to accompany minor children to any screening that “involves” violence or drug use. Kalshi Br. 15. In context, that policy uses the word “involve” to refer to the film’s content, not to the behavior of attendees—even though it is semantically possible for the act of *attending* the screening to “involve” the listed activities. Now suppose the policy also lists “horror” and “science fiction” alongside “violence” and “drug use.” Those additional objects of “involve” place the policy’s focus beyond doubt, because it is *not* semantically possible for the act of attending a screening to entail science fiction or horror. As a result, “involve” can *only* refer to the underlying film across all four categories. No reasonable person would read the policy to refer to the film’s content with respect to science fiction and horror, but to the attendees’ behavior with respect to violence and drug use. Nor would anyone call that odd construction “consistent.” While the *definition* of “involve” is unchanged, the word would perform two fundamentally different *tasks*. The Commission’s split-screen reading of the CEA fails for the same reason.

Statutory Context. Context underscores the Commission’s error, because its interpretation would reduce multiple statutory terms to surplusage and unwind the U.S. Code to revive a sweeping pre-clearance regime that Congress repealed.

Start with “gaming.” If “gaming” means anything a layperson might describe as “betting,” construing “involve” to refer to the actions of traders would “capture all contingent events.” CFTC Br. 27 n.26. The Commission tries to avoid that obvious problem by ginning up a definition of “gaming” that is limited to bets on games “or

contests” but no other contingencies. CFTC Br. 27–30. But that definition fails for reasons explained below. *See* Part II.A, *infra*. And the Commission’s embrace of that plainly gerrymandered rule underscores its threshold error on “involve”; one error begets another. By contrast, Kalshi’s consistent, event-focused reading of “involve” requires no gymnastics: It authorizes public-interest scrutiny only if the contract’s underlying event involves gaming in its ordinary, plain-meaning sense. *See* Kalshi Br. 24. As even the Commission now acknowledges, that is not a null set: A contract “tied to the winner of the World Series of Poker,” for instance, would qualify under either party’s reading. CFTC Br. 24 n.24. Contracts contingent on games—like the Super Bowl and other sporting events—would too. *See* Kalshi Br. 23.³

The problem with the Commission’s reading is even starker when it comes to “unlawful activity.” Because multiple States already ban wagering on *any* contingent event, construing “involve” to refer to the act of trading would subject *every* event contract to public-interest pre-clearance. *See* Kalshi Br. 20, 32–33. And this time, the Commission identifies no limiting principle to avoid that result. *See* CFTC Br. 26, 35–36. It denies reading “involve” to mean “that the *act of trading* the contract itself must be unlawful.” CFTC Br. 26. But while a state-law prohibition on trading

³ Attempting to manufacture disagreement on this point, the CFTC straw-mans Kalshi as claiming that a contract “involves” an activity “only if the underlying *is*” that activity; the Super Bowl is a “game” but is not itself “gaming.” CFTC Br. 24. But, as explained, the real question is whether the underlying event “constitutes *or relates to*” gaming. Kalshi Br. 15 (emphasis added). The Super Bowl plainly does. Again, the dispute is not about how *closely* an underlying event must relate to one of the enumerated activities; it is about whether it suffices for *trading* a contract to relate to an enumerated activity. The latter inquiry has no basis in the statute.

the contract might not be *necessary* under the Commission’s reading, the Commission certainly treats such a law as *sufficient* to trigger public-interest scrutiny. *See* n.1, *supra*. Indeed, that is the only way the Commission can cram Kalshi’s contracts into the “unlawful activity” category. And, on that logic, trading any event contract would equally trigger review. *See infra*, 20–21; *see also, e.g.*, N.D. Cent. Code Ann. § 12.1-28-01 (outlawing “risking any money” on the “outcome of an event”).

As a result, the Commission’s construction of “involve” ultimately requires these two enumerated activities (gaming and unlawful activity) to swallow their neighbors—and to upset the statute’s basic structure, whereby event contracts are subject to public-interest review *only* in narrowly defined circumstances. The CFTC offers no real defense of that result, which not only violates the surplusage canon, *see United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023), but also implausibly construes lone exceptions so broadly as to “read out the rule,” *United States v. Slatten*, 865 F.3d 767, 807 (D.C. Cir. 2017).

The Commission’s only retort is to suggest that it might exercise its discretion to allow some event contracts to proceed; in other words, public-interest review is not tantamount to a ban. *See* CFTC Br. 36. That is true, but does not solve the problem with the Commission’s reading. Under the CEA, event contracts are presumptively *allowed*. Congress adopted that basic structure in 2000, abandoning an old regime that conditioned the listing of any new contract on a showing by the exchange that the product was “in the public interest.” CFTC Br. 5; *see also* Pub. L. No. 93-463, § 207, 88 Stat. 1389, 1400 (1974) (codified at 7 U.S.C. § 7(7) (1994)); Pub. L. No. 106-

554, §§ 110(2), 113, 114 Stat. 2763, 2763A-384, 399 (2000) (codified at 7 U.S.C. §§ 7, 7a-2 (2006)). In 2000, Congress flipped the presumption. *See* 7 U.S.C. § 7a-2(c)(3) (2006). And when Congress returned to the issue a decade later in the Dodd-Frank Act, it chose *not* to restore the across-the-board “public interest” rule that reigned from 1974 to 2000. Instead, it crafted the provision at issue here—a “special rule” for event contracts that allows for public-interest scrutiny only if they “involve” one of the enumerated activities. *See* Pub. L. No. 111-203, § 745(b), 124 Stat. 1376, 1736 (2010) (codified at 7 U.S.C. § 7a-2 (2018)). Any reading of the “special rule” that nonetheless sweeps in *all* event contracts for CFTC review ignores the CEA’s basic structure and history.

Kalshi’s common-sense reading of “involve,” by contrast, avoids all of these problems. Under Kalshi’s reading, the statute authorizes public-interest review only when a contract’s *underlying event* involves (relates to, entails, etc.) “gaming” or an “unlawful” activity (or one of the other enumerated activities). That reading respects the statutory structure, works with all of the enumerated activities, and affords each category a clear and appropriately constrained sweep without swallowing the rule. It is clearly the correct interpretation.

B. The CFTC’s Attacks on Kalshi’s Reading Fail.

Unable to defend its own reading of the statute, the Commission goes after Kalshi’s. It starts by making a textual argument that (once again) mischaracterizes Kalshi’s position. And it continues by claiming that Kalshi’s reading is at odds with a snippet of legislative history. Both gambits fail.

On the text, the Commission points out that, earlier in the statute, Congress used the phrase “based upon” in relation to an “occurrence, extent of an occurrence, or contingency.” CFTC Br. 23 (quoting 7 U.S.C. § 7a-2(c)(5)(C)). Gesturing at the meaningful-variation canon, the Commission argues that Congress must have used “involve” to mean something “broader” than “based upon.” CFTC Br. 23.

Again, however, the Commission is attacking a straw man. Kalshi agrees that “involve” carries its typical meaning (to relate to, entail, etc.), which is broader than “based upon.” *See supra*, 5–7. To use the Commission’s example, a contract that pays out based on “whether a certain amount of cocaine is seized” by authorities might not be “based upon” illegal activity, since the seizure itself would be legal. The contract’s event would still “involve”—*i.e.*, relate to—unlawful activity. CFTC Br. 26. Kalshi agrees. But none of that has anything to do with the question here, which is whether it is the *underlying event* or the *act of trading* that must “involve” the activity. For example, does an event contract on the average U.S. temperature next July “involve” unlawful activity simply because wagering on such an outcome would be unlawful gambling in some States? The answer to that question is surely “no.”

Finding no refuge in statutory text, the CFTC turns to a particularly unreliable fragment of legislative history: a short floor colloquy. CFTC Br. 24. The D.C. Circuit has warned that “judges must ‘exercise extreme caution’” with such exchanges. *Tex. Mun. Power Agency v. EPA*, 89 F.3d 858, 875 (D.C. Cir. 1996). And legislative history cannot “cloud a statutory text that is clear.” *Ratzlaf*, 510 U.S. at 148. Regardless, the colloquy only bolsters Kalshi’s event-focused reading. The Senators expressed

concerns about contracts contingent on certain *events*: both “*events* that threaten our national security,” such as “terrorist attack[s],” and “sporting *events* such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament.” 156 Cong. Rec. S5907 (daily ed. July 15, 2010) (emphases added). In all of these examples, the focus is on the *underlying events*, not the *behavior of traders*. And nothing in the Senators’ exchange supports the Commission’s bizarrely inconsistent reading of the statute.

II. THE CFTC’S READING OF THE ENUMERATED ACTIVITIES IS UNTENABLE.

Even accepting the Commission’s erroneous reading of “involve,” Kalshi still prevails. *First*, trading Kalshi’s contracts does not involve “gaming” because traders take positions on *elections*, not *games*. The Commission’s attempt to expand “gaming” to cover wagers on “contests”—but nothing else—has no basis in law or common sense, and Kalshi’s contracts are not covered by that definition anyway. *Second*, the act of trading Kalshi’s contracts does not involve “unlawful” activity because federal law preempts state law in this sphere. The Commission’s argument, to the extent it is comprehensible, hinges on a reading of “unlawful activity” that subjects *every* event contract to public-interest review, which is obviously untenable.

A. “Gaming” Requires a Game.

As Kalshi explained in its opening brief, “gaming” ordinarily means playing games of chance for money. It can also refer to betting on games, including sporting events. *See* Kalshi Br. 24–25. Elections are not games. So event contracts contingent on elections cannot fairly be said to “involve” “gaming.” Kalshi Br. 27. As a matter of ordinary meaning, “gaming” is too *narrow* to encompass Kalshi’s contracts.

The Order observed that some dictionaries connect “gaming” with “gambling,” and then pointed to some definitions of “gambling” that sweep in any and all wagers on uncertain contingencies. *See* Order at 8–9. But that approach—treating “gaming” as a catchall for anything colloquially described as “gambling” or “wagering”—would sweep *every* event contract into this category. *See* Kalshi Br. 20, 27–28. And it’s hard to imagine a less reasonable construction of a single exception on an enumerated list than one that consumes each of its neighbors and the general rule to boot. *See supra*, 8–11. This interpretation is too *broad* to serve the Commission’s objectives.

Accordingly, the CFTC devises a made-for-litigation Goldilocks definition: just broad enough to reach Kalshi’s contracts, but just narrow enough not to swallow the rule. On its view, “gaming” reaches everything covered by Kalshi’s reading (betting on “games”) *plus* “staking something of value on a contest of others”—but *nothing else*. CFTC Br. 29. To get there, the Commission takes three leaps: (1) gaming means “gambling,” (2) gambling means wagering on games *or contests*, and (3) elections are “contests.” Each step transgresses basic principles of statutory interpretation.

First, “gaming” is not the same as “gambling.” Dictionary definitions and common usage alike confirm that gaming—unlike the broader terms “gambling” or “wagering”—typically requires a predicate *game*. Kalshi Br. 25–26. A water-cooler bet between coworkers, for instance, could count as “gambling” but is not “gaming.” To be sure, all “gaming” is a form of “gambling,” which is why definitions of the former sometimes cross-reference the latter. CFTC Br. 27 & n.28. But the converse is not true: Not all “gambling” is “gaming.” Congress chose the narrower term.

The Commission has no response to the many state statutes confirming the ordinary, game-based reading of “gaming.” See Kalshi Br. 25–26 & n.6. And it abandons the Order’s misguided reliance on the Unlawful Internet Gambling Enforcement Act, which does not use the word “gaming” at all. See Kalshi Br. 25. The Commission does attempt to explain away the Indian Gaming Regulatory Act (IGRA), which defines “gaming” by reference to “games.” 25 U.S.C. § 2703(6)–(7). The CFTC responds by pointing out that IGRA does so only for two categories of “gaming,” but then includes a “catchall” category lacking that limitation. CFTC Br. 31–32. But that supposed “catchall” is “class III gaming”—the most heavily regulated category, typically offered at casinos. 25 U.S.C. § 2703(8). Regulations define Class III by reference to “[c]ard games such as baccarat, chemin de fer, blackjack (21), and pai gow”; “[c]asino games such as roulette, craps, and keno”; “slot machines” and other “games of chance”; “sports betting,” including “wagering on horse racing, dog racing or jai alai”; and “[l]otteries.” 25 C.F.R. § 502.4. That regulatory definition exemplifies the conventional, game-based reading of “gaming” that Congress clearly meant to invoke in the CEA. It well proves Kalshi’s point.

Second, conflating “gaming” with “gambling” only walks the Commission into another problem. The ordinary definition of “gambling” is too *broad* to fit here, since it would “capture all contingent events.” CFTC Br. 27 n.26. The Commission is thus forced to gerrymander a limited definition of “gambling” to cover wagers on games *or contests*—but no other bets. That limit is artificial and unpersuasive. There are 21 state laws that define gambling to include wagering on “contests.” Of those, however,

the majority (13) reach betting on *any* future event beyond the bettor’s control,⁴ as do 16 other statutes that do not single out “contests” but subsume them within broader definitions of gambling.⁵ Again, that sweeping definition is untenable in context, since it would turn *all* event contracts into “gaming.” *Supra*, 14. That is why even the Commission disclaims the broader definition. CFTC Br. 27–28 & n.26 (declaring that the “Commission did not adopt the broad definition” found in many state laws).

That leaves just eight state gambling laws that encompass wagers on contests but not *all* wagers on contingent events. As discussed below, even those eight use the term “contests” in a way that clearly *excludes* elections. *Infra*, 17–18. But setting that aside, the question remains: Why is this narrow, outlier definition of “gambling” the best understanding of what Congress intended by “gaming” in the CEA?

⁴ See Ala. Code § 13A-12-20(4); Alaska Stat. Ann. § 11.66.280(3); Ariz. Rev. Stat. § 13-3301(6); Haw. Rev. Stat. § 712-1220; Me. Rev. Stat. tit. 17-A, § 952; Mich. Comp. Laws § 750.301; Mo. Rev. Stat. § 572.010; Neb. Rev. Stat. § 28-1101(4); N.J. Stat. § 2C:37-1; N.Y. Penal Law § 225.00(2); Or. Rev. Stat. § 167.117(7); Va. Code Ann. § 18.2-325(1); Wash. Rev. Code § 9.46.0237.

⁵ See Colo. Rev. Stat. Ann. § 18-10-102; Conn. Gen. Stat. Ann. § 53-278a; Idaho Code § 18-3801; Ind. Code § 35-45-5-1(d); Iowa Code § 725.7(1)(b); Kan. Stat. Ann. §§ 21-6403(a)(1), 6404(a)(1); Minn. Stat. Ann. §§ 609.75, 609.755(1); Miss. Code Ann. § 97-33-1; Mont. Code Ann. § 23-5-112(14)(a); N.H. Rev. Stat. Ann. § 647:2; N.M. Stat. Ann. §§ 30-19-1, 30-19-2(A); N.D. Cent. Code Ann. § 12.1-28-01; Okla. Stat. Ann. tit. 21, §§ 981, 982; Tenn. Code Ann. § 39-17-501; Wis. Stat. Ann. §§ 945.01, 945.02(1); Wyo. Stat. Ann. § 6-7-101.

Notably, many of the States with broad definitions of “gambling” and similar concepts separately define “gaming” more narrowly, to focus on games. That confirms Kalshi’s point that the Commission went off-track at the first step of its analysis. *Compare* Colo. Rev. Stat. Ann. § 18-10-102 (“gambling”), *with id.* § 44-30-103(22) (“gaming”); *compare* Miss. Code Ann. § 97-33-1 (“wagering or betting”), *with id.* § 75-76-5(l) (“gaming”); *compare* N.M. Stat. Ann. § 30-19-2 (“gambling”), *with id.* § 60-2E-3 (“gaming”); *compare* N.Y. Penal Law § 225.00(2) (criminal “gambling”), *with* N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1301(19)–(20) (“gambling,” “gaming,” “game”).

The Commission’s answer is utterly conclusory. It says “Congress used broad language” to “provide broad authority to the Commission to prohibit event contracts.” CFTC Br. 32. That is backwards. The “broad” definition of “gambling” is untenable, so the Commission rejects it. There is no reason to believe that Congress, by using the word “gaming,” meant to exceed that word’s ordinary game-based meaning and instead reach “gambling”—but then stop at that term’s relatively rare, contest-based definition while excluding all other bets. This neither-fish-nor-fowl definition is an outcome-driven gerrymander, not a serious effort to discern congressional intent.

Third, even looking past all of that, elections are not “contests” for purposes of the statutory definitions on which the Commission relies. *See* Kalshi Br. 29–30. The Commission notes that elections are sometimes colloquially called “contests” by the media. CFTC Br. 30 n.30. But it identifies no statute, case, or other legal authority that characterizes elections that way. And in the context of the gambling statutes on which the Commission bases its argument, “contests” does *not* include elections. Of the eight statutes that define gambling to mean wagering on games *or contests* (but nothing else), three *separately* ban betting on elections—which would be superfluous if elections were already “contests.”⁶ The other five use “contests” in ways that clearly refer to events typically staged for amusement and betting. No one would classify an election as a “contest ... of skill, speed or power of endurance of human or beast.”⁷

⁶ *See* Ga. Code Ann. § 16-12-21(a)(2); 720 Ill. Comp. Stat. 5/28-1; Tex. Penal Code Ann. § 47.02(a)(2).

⁷ Del. Code Ann. tit. 11, § 1403(1); Fla. Stat. § 849.14.

Nor would anyone understand an election to be a “contest” when that word appears in a list neighboring “game, gaming scheme, or gaming device,” or “game, ... lottery, or contrivance.”⁸ Words must be known by the company they keep.

The CFTC protests feebly that *noscitur a sociis* cannot apply here, lamenting a dearth of “context cues.” CFTC Br. 31. Please. Were legislatures really addressing elections when they banned wagers on “contest[s], game[s], gaming scheme[s], or gaming device[s],” or contests of “skill, speed, or power”? *See* Kalshi Br. 29 & nn.7–8. Of course not. The drafters of those statutes did not intend “contest” to capture elections any more than Congress intended “gaming” to mean a bespoke subset of “gambling” that includes wagers on “contests” but nothing else.

The Commission’s favorite snippet of legislative history only proves the point. *See* CFTC Br. 33. Senator Lincoln’s litany of “sporting events”—a football game, a horse race, and a golf tournament—is perfectly consistent with Kalshi’s reading of “gaming.” The Commission acknowledges that, but responds that staking something of value on an election “is a reasonably comparable activity to betting on sports.” CFTC Br. 34. No, it’s not. An election is not a game. It is not staged for entertainment. It has vast extrinsic and economic consequences. Does the CFTC really believe there is no difference between the 2024 Super Bowl and the 2024 congressional elections? That the identity of the next President has the same impact on Americans as which horse wins the Kentucky Derby? That control of the House

⁸ Ky. Rev. Stat. § 528.010(6)(a); La. Stat. § 14:90; Utah Code Ann. § 76-10-1101(8)(a).

and the Senate is economically comparable to the outcome of the Masters? If staking money on an election is “reasonably comparable” to sports betting, so too is staking money on wheat harvests, demand for gold, or oil production. As Justice Holmes observed long ago, it is “extraordinary and unlikely” that any of this is “to be regarded as mere wagers.” *Bd. of Trade v. Christie Grain & Stock Co.*, 198 U.S. 236, 249 (1905).

The CFTC’s convoluted analysis thus fails at each step: “Gaming” isn’t the same as “gambling”; “gambling” isn’t limited to bets on “contests”; and elections aren’t “contests.” If anything, the panoramic view of these interpretive gymnastics looks even worse than those close-ups. There is no earthly reason Congress would have used the word “gaming” in such an idiosyncratic way—and the Commission doesn’t supply one. “Had Congress intended” to cover contracts on elections, “it surely would have said so more simply.” *Moreau v. Klevenhagen*, 508 U.S. 22, 33 (1993).

B. “Unlawful Activity” Requires Unlawful Activity.

Even under the CFTC’s reading of “involve,” Kalshi’s contracts do not “involve” unlawful activity for a simple, undisputed reason: Trading them is not unlawful. The CEA preempts “application[s] of state law [that] would directly affect trading on or the operation of a futures market.” *Am. Agric. Movement, Inc. v. Bd. of Trade*, 977 F.2d 1147, 1156 (7th Cir. 1992). Accordingly, buying and selling event contracts on licensed exchanges like Kalshi’s cannot be prohibited by state gambling laws—whether those laws prohibit wagering on future events generally, wagering on elections specifically, or anything else. *See* Kalshi Br. 31.

The Commission does not dispute any of this. In particular, it “agree[s] that state laws cannot prohibit trading futures on registered exchanges, and that the CEA preempts state law to the contrary.” CFTC Br. 35. Nevertheless, the Commission insists that “[t]aking a position” on Kalshi’s contracts has “as an essential feature or consequence” an “activity that is unlawful in a number of States—wagering on elections.” CFTC Br. 35. It is hard to discern what the Commission even means by that, much less how this “essential feature” test might differ from other formulations of “involve.” Wordplay aside, the Commission’s argument appears to be that an event contract “involves” unlawful activity if trading it *would be* illegal in any jurisdiction *but for* federal preemption of state law.

As Kalshi explained in its opening brief, however, *all* event contracts fit that description. *See* Kalshi Br. 32–33. The Commission does not (and cannot) dispute that numerous States already prohibit staking money on any contingent future event. Kalshi Br. 32 n.11; *supra*, nn.4–5. So if the Congressional Control Contracts “involve” unlawful activity because some States prohibit wagering on elections, then every event contract equally “involves” unlawful activity because many States prohibit all wagering on contingencies. Acquiring a contract contingent on a future event beyond the buyer’s control would, for example, “have as an essential feature or consequence” (CFTC Br. 35), the “risk[ing] something of value upon ... a future contingent event not under [one’s] control,” N.Y. Penal Law § 225.00(2). The Commission cannot avoid that result—no matter how many formulations of “involve” it trots out.

Once again, any construction of one category of enumerated activity that would sweep in every event contract is not a tenable one. *Supra*, 8–11. Even the CFTC knows that. What else explains its herculean efforts to cabin “gaming” to wagers on “contests” rather than all events? *Supra*, Part II.A. Here, though, the Commission has no limiting principle, so it quietly drops the façade. It appears to acknowledge that its approach would subject every event contract to public-interest scrutiny, and simply responds that this doesn’t compel it to *ban* every event contract. CFTC Br. 36. Still, however, that turns the statutory regime upside down, leaving the other four enumerated activities with no work to perform, and effectively undoing the 2000 amendment that eliminated across-the-board CFTC review. *See supra*, 10–11. This is not a defensible construction of the statute.

* * *

One last note. Apparently apprehensive about its interpretation, the CFTC gestures at *Chevron* deference without actually invoking it. CFTC Br. 19 (arguing that *Chevron* applies but that the Court should adopt the Commission’s construction because it “is the most reasonable interpretation”). Whatever *Chevron*’s future, it does not apply here. Deference kicks in only when a statute remains genuinely ambiguous after exhausting all traditional interpretive tools. *See, e.g., Petit v. U.S. Dep’t of Educ.*, 675 F.3d 769, 781–82 (D.C. Cir. 2012). The Commission does not claim any ambiguity, and for all the reasons explained, the traditional tools of construction unambiguously support Kalshi’s interpretation—and foreclose the Commission’s. Kalshi’s contracts are thus not subject to public-interest scrutiny.

III. THE ORDER'S PUBLIC-INTEREST DETERMINATION IS ARBITRARY AND CAPRICIOUS.

Because the Commission had no authority to subject Kalshi's contracts to a public-interest inquiry in the first place, this Court need go no further. But the agency's public-interest review also violated the law by dismissing benefits the record established while hypothesizing harms the record refuted. The CFTC's attempts to prop up the Order's faulty analysis only further illuminate its errors.

A. The CFTC Misleads on the Standard of Review.

Sensing the Order's vulnerability, the Commission leads off by urging the Court to apply a more relaxed standard of review supposedly applicable to informal adjudications. *See* CFTC Br. 14, 18, 38, 44. That argument—made even as the Commission trumpets its own expertise and invokes deference to its legally binding Order, *see* CFTC Br. 19—is as meritless as it is shameless.

The arbitrary-and-capricious standard set by 5 U.S.C. § 706(2)(A) applies to *all* final agency actions, regardless their form. *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413–14 (1971) (informal adjudication); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (rulemaking). And informal adjudication—no less than rulemaking—requires reasoned decision-making. *See, e.g., Butte County v. Hogen*, 613 F.3d 190, 194–95 (D.C. Cir. 2010) (remanding informal adjudication on that basis); *Clark County v. FAA*, 522 F.3d 437, 441 (D.C. Cir. 2008) (Kavanaugh, J.) (same); *Dr Pepper/Seven-Up Cos. v. FTC*, 991 F.2d 859, 863, 866 (D.C. Cir. 1993) (same). If an agency “ignore[s] evidence contradicting its position,” “refus[es] to consider evidence bearing on the issue,” or “refuse[s] to

evaluate” pertinent information, its adjudication is “arbitrary ... within the meaning of § 706.” *Butte County*, 613 F.3d at 194–95; *contra* CFTC Br. 38. Indeed, the CFTC’s favorite adjudication case confirms that point—and cites rulemaking cases in so doing. *See Concert Inv., LLC v. Small Bus. Admin.*, 616 F. Supp. 3d 25, 33–35 (D.D.C. 2022) (explaining that an “agency must show it has considered the relevant aspects of the issue” and cannot “fail[] to discuss or distinguish” pertinent contrary evidence). That is Kalshi’s argument in a nutshell. *See* Kalshi Br. 34.

To be sure, certain procedural requirements applicable to formal rulemakings do not apply to informal adjudications. *See Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017). But Kalshi has never suggested that the Commission violated any procedural obligation. Nor has Kalshi asked the Court to substitute its judgment for the Commission’s, or claimed it must “respond to each and every comment.” CFTC Br. 18, 40–41, 44. Kalshi merely seeks to hold the Commission to the APA’s universal guarantee of reasoned decision-making. Even in an adjudication, an agency’s top-level policymakers cannot solicit comments only to cherry-pick favorable tidbits while elevating unfounded speculation over concrete evidence. *See Butte County*, 613 F.3d at 194–95; *Clark County*, 522 F.3d at 441–43. That is what happened here.

B. The CFTC’s Arguments about “Economic Effects” Are Meritless.

Partisan control of Congress has vast economic consequences, both directly and through its influence on policy and other governmental decisions. Kalshi Br. 35–36; CFTC Br. 42–43. That is undeniable. Event contracts allow affected parties to hedge against those economic risks. The Commission’s responses do not pass muster.

First, while the parties agree that the CEA’s public-interest determination may properly account for economic considerations such as hedging utility, *see* Kalshi Br. 35, the Commission wrongly conflates that common ground with acquiescence to its amorphous and ever-shifting “economic purpose” test, *see* CFTC Br. 36–37 n.34. Kalshi does *not* endorse whatever test the Commission purports to be applying here—particularly since it is near impossible to tell what that test is or how it operates. The Commission constantly moves the goalposts throughout both its Order and its brief. *Compare* Order at 19 (requiring “more than [] occasional” hedging), *with id.* (also asking whether contracts will be used “predominantly” for commercial purposes); *compare id.* at 13, 19 (characterizing “economic purpose” as virtually dispositive), *with id.* at 19–23 (touting non-economic harms); *see also* CFTC Br. 36–52 (similar inconsistencies). And the agency has no regulations in effect to guide this inquiry.

Second, while the Commission repeats that the economic consequences of congressional control are not “sufficiently direct, predictable, or quantifiable” to hedge against, CFTC Br. 42, it barely tries to defend that “direct effects” test from Kalshi’s legal and factual critique. *See* Kalshi Br. 36–37. Instead, it pivots to a standard the Order mentioned only in passing: whether Kalshi’s contracts will be used for “hedging or price basing” on a “more than an occasional” basis. CFTC Br. 40–42. In doing so, the Commission implicitly accepts that Kalshi’s contracts *can and will* be used for hedging, and shifts its focus to *how often*. But that “more than occasional” standard appears to be derived solely from regulations rescinded decades ago. CFTC Br. 5, 40. Congress repealed the statutory structure that justified those

regulations. *See supra*, 10–11. And the Commission has, since then, failed to apply this “more than occasional” standard in similar cases. *See* CFTC, *CFTC Issues Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts* (Apr. 2, 2012), *available at* <https://www.cftc.gov/PressRoom/PressReleases/6224-12>. Moreover, the standard raises more questions than answers. Is “occasional” an *absolute* concept (requiring some unknown number of hedgers) or a *relative* one (requiring some unknown ratio of hedgers to speculators)? Either way, how can it be applied to contracts, like these, that have not yet been listed for trading?

Third, the Order remains arbitrary and capricious even under the “occasional hedging” test. The CFTC concedes that elections—and specifically congressional control—present real economic risks. *See* CFTC Br. 42–43. And there is copious record evidence that many individuals and entities would—and do—wish to use the contracts to hedge economic risks.⁹ Multiple *amici* provide further substantiation.¹⁰ The Commission identifies no concrete reason to disbelieve those assertions. And there is *zero* evidentiary basis for the Commission’s theory that hedging uses will be less than “occasional”—in either an absolute or a relative sense.

⁹ *See, e.g.*, AR 1348, 1375–76, 1386–87, 1391, 1532, 1533, 1539–40, 1590–91, 1597, 1613, 3367.

¹⁰ *See* ECF 24 (Paradigm Amicus Br.) at 3–8 (discussing how legislation, confirmations, and taxation can all directly affect interests in various sectors and those depend on who wields power); ECF 26 (Aristotle Amicus Br.) at 6–8 (discussing predictable economic effects of elections); ECF 25 (Grundfest Amicus Br.) at 13 (discussing research on how prediction markets are “useful both for investors who want to speculate on the election outcome and for those who want to reduce the exposure of their portfolio (or hedge against) the election outcome”).

Indeed, the Commission's attempts to defend its non-record speculation about how Kalshi's contracts will be used only underscore the weakness of its position. For example, it says that congressional elections occur "only once every two years." CFTC Br. 41. That is obviously true, but just as obviously says nothing about the extent to which businesses and individuals may wish to hedge the risks associated with these biennial events. *See* CFTC Br. 41. Futures and forward contracts often tie to singular points in time—say, the price of a commodity on a certain date. The same goes for any number of event contracts—say, the GDP statistics for a certain quarter or the occurrence of a hurricane in July. Whether the underlying events occur quarterly, yearly, or one time only has nothing to do with whether or to what extent traders will use event contracts to hedge economic risks. If anything, the fact that congressional elections don't happen every day only *amplifies* their economic implications.

Nor does the unexceptional structure of these contracts lend support: Most if not all event contracts are "binary," and pay out only once. CFTC Br. 41. Those characteristics do not render their economic benefits any less legitimate—or their hedging use less than "occasional." Moreover, the Commission ignores that parties can *continuously* trade these contracts as prices fluctuate until their settlement date, expanding their potential economic uses over time. *Cf.* Aristotle Amicus Br. 9 (noting that gambling, by contrast, typically lacks such secondary markets). The Commission's scattershot efforts to criticize aspects of these contracts that are shared by the event contracts the Commission regularly approves highlights the lack of reasoned decision-making it employed to reject contracts it disliked.

The Commission also objects that the contracts' payout is not tied to "actual or estimated losses" and that congressional control *alone* does not have economic impacts without "intervening events and variables." CFTC Br. 41–42. But these critiques again fail to distinguish the Congressional Control Contracts from any other event contracts. They also misunderstand how hedging and risk-mitigation actually work. Return to the example of a hurricane contract. Kalshi Br. 36–37. Whether a hurricane materializes differs from whether it results in a property loss, given all the "intervening events and variables." Event contracts are not insurance policies. They serve instead to hedge the *risk* of whether the event will *happen*. In a complicated global economy, businesses and individuals must *always* consider the combination of factors that compose risks. The Commission makes these same points about *election risks*—yet somehow forgets that same reality here. CFTC Br. 42, 47.

The unmistakable throughline from all of the Commission's arguments is that it believes Kalshi did not carry some unclear burden to sufficiently prove the extent of its contracts' economic utility. But by persistently placing this burden on Kalshi, the Commission yet again flips Congress's framework on its head. Congress replaced the prior pre-clearance regime, under which markets had to establish compliance with the public-interest standard, with a new system under which a contract is presumptively legal unless *the Commission* determines that the contract is "*contrary to the public interest.*" 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added); *see also supra*, 10–11. And even after shifting the burden to Kalshi, the Order's adverse finding rests on an impossibly amorphous test, ignores extensive record evidence, and repeatedly

relies on arguments that would apply equally to all event contracts. That is textbook arbitrary-and-capricious reasoning. *See, e.g., Butte County*, 613 F.3d at 194–95; *Clark County*, 522 F.3d at 441–43.

C. The Commission Does Not Meaningfully Engage with the Non-Economic Benefits the Order Ignored.

Beyond their hedging and price-basing uses, Kalshi’s contracts provide extensive informational benefits. To highlight a few:

- The former chairman of the Council of Economic Advisers explained that the White House consulted prediction-market data “to understand what informed traders with money at stake would expect.” AR 1549; *see also* AR 1451–53, 1494–99.
- A Nobel laureate economist noted that influential studies have relied on the “powerful resource” of prediction data to develop “valuable” political, economic, and social insights. AR 1750–53.¹¹
- Several commentators discussed how such data also offers the general public a neutral, market-driven alternative to traditional polling, which has proven unreliable in recent years.¹²

Amici reinforce the same points. *See* Aristotle Amicus Br. 12–14 (prediction markets are an “essential public service” for public, academics, companies, and governments); Paradigm Amicus Br. 8–11 (similar); Grundfest Amicus Br. 14–16 (same).

¹¹ *See also, e.g.,* AR 1404 (collecting research); AR 1438–39 (similar); AR 1452–53 (example of study using “prediction market prices to infer market beliefs” and thus make “accurate measurements of [climate] abatement costs”).

¹² *See, e.g.,* AR 1577 (explaining why Kalshi’s contracts would advance accuracy and transparency); AR 1543–44 (collecting media coverage relying on prediction markets and research finding that such data outperforms traditional forecasting); AR 1584 (human-rights activist who relies on prediction markets as alternative to unreliable polls and fake media reports); AR 1437 (explaining how election contract markets can build social consensus and educate the public); AR 1499–503 (documenting advantages of political prediction markets over polls).

The CFTC acknowledges that those non-economic benefits are relevant to the public interest. CFTC Br. 36, 49. But the Commission’s brief—like its Order—simply dismisses them. CFTC Br. 49. “Stating that a factor was considered” is not a “substitute for considering it,” especially when it involves a key consideration for the agency’s ruling—*i.e.*, whether these contracts serve the public interest—and the agency is vague about its role in the final determination. *Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986). The Commission’s refusal to engage with these issues reflects the opposite of reasoned decision-making.

D. Speculation about Election Integrity Cannot Save the Order’s Public-Interest Determination.

Having artificially minimized the contracts’ benefits, the Commission amplifies their supposed harms. CFTC Br. 45–52. But its speculation about election integrity and playing “election cop” is quintessential arbitrary-and-capricious reasoning.

To start, the Commission does not seriously contend that Kalshi’s contracts would result in any long-term manipulative effects. *See* CFTC Br. 47–48. Nor could it. Political event markets have existed for many years and in other democracies. *See, e.g.*, AR 1528; AR 2786. Research in the record shows that the “likelihood of this kind of manipulation occurring is extremely remote.” AR 1448; *see also* AR 1429–31. And the Commission offers no response to the basic, intuitive point that Kalshi’s Congressional Control Contracts would not meaningfully alter the already-existing incentives with respect to elections and misinformation, given the sheer volume of inputs to the national political discourse, the enormous sums already spent on

campaigns, and the vast consequences of election outcomes.¹³ Indeed, “if a person seeks to manipulate election outcomes, manipulating the event market would be a foolish mechanism by which to achieve that result” and it “is more likely to have an anti-manipulative effect.” Grundfest Amicus Br. 16–17.

The Commission instead insists that Kalshi’s contracts carry unique potential for *short-term* manipulation. Specifically, the Commission posits that someone might attempt to spread false information in the hopes of briefly spiking event-contract values and profiting off that distortion. CFTC Br. 47–48. But the Order itself never distinguished between long- and short-term manipulation. *See Clark County*, 522 F.3d at 443 n.1 (rejecting such post-hoc rationalizations); *see also SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). In any event, that kind of short-term risk exists with *any* derivative. A trader can always try to manipulate short-term pricing by spreading falsehoods and trading large quantities. So this risk does not distinguish Kalshi’s contracts as uniquely contrary to the public interest. If anything, such ploys are even less likely to work here than in other contexts. AR 1475 (“With a transparent order book it is very easy to see if someone is attempting to manipulate a market, immediately mitigating the impact of any short-lived price manipulation.”).

¹³ *See, e.g.*, AR 1528 (“implausible that anyone” buying these contracts would have “incentive” to “somehow then flip an election through concerted effort”); AR 1449 (concluding “that this election market almost certainly produces no additional manipulation risk relative to those produced by already existing markets”); AR 1577 (“concerns that a contract like Kalshi’s might be used for manipulative purposes are easily exaggerated”); *see also* AR 3007–08 (collecting sources).

Nor is the Commission uniquely incapable of investigating attempted short-term market manipulation in this context. As Kalshi explained, the CFTC regulates myriad derivatives markets involving commodities over which it lacks independent authority, and the risk of short-term manipulation exists in all of them. Kalshi Br. 44. The Commission regularly flexes its regulatory muscles to prevent misconduct by “supervis[ing] market activity and market participants” and to “hold wrongdoers accountable by investigating and prosecuting violations of the CEA.” *See* CFTC, *Holding Wrongdoers Accountable*, available at <https://www.cftc.gov/LawRegulation/HoldingWrongdoersAccountable>. The agency can use the same tools here.

Importantly, policing markets and commercial activity surrounding them is not the same as investigating election *outcomes*. *Contra* CFTC Br. 50–51 (conflating the two); *see also, e.g.*, AR 2793–94 (repudiating “election cop” fears). The CFTC is (and should be) concerned with attempts to manipulate the pricing of derivatives (*e.g.*, buying a large volume of Congressional Control Contracts after spreading falsehoods that depress market prices); but it is not (and should not be) responsible for combating electoral fraud (*e.g.*, unlawful voting or ballot-counting). The Order’s fearmongering about the difficulty of undertaking the latter task is therefore irrelevant.

With nowhere else to hide, the Commission falls back on the gauzy refrain that elections are “special.” CFTC Br. 51. That only highlights the fundamental flaw in the Commission’s case: “Congress easily could have listed Congressional control, or elections, or both, as enumerated activities subject to a public interest review.” Mersinger Dissenting Statement, CFTC.gov (Sept. 22, 2023), *available at*

<https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092223>.

But that is not the statute that Congress wrote. Contracts involving elections do not trigger public-interest scrutiny in the first place, and the Commission cannot use the review process to single out these contracts that it evidently disfavors.

CONCLUSION

This Court should grant Kalshi's motion for summary judgment, deny the CFTC's cross-motion for summary judgment, vacate the CFTC's Order, and declare that Kalshi is entitled to list the Congressional Control Contracts for trading. Given the upcoming November 2024 congressional elections, Kalshi respectfully requests that the Court adjudicate the pending motions reasonably in advance of that date.

Dated: March 27, 2024

Respectfully submitted,

Amanda K. Rice
(D.C. Bar 1019208)*
JONES DAY
150 W. Jefferson Avenue,
Suite 2100
Detroit, MI 48226
(313) 733-3939

/s/ Yaakov M. Roth
Yaakov M. Roth (D.C. Bar 995090)
Joshua B. Sterling (D.C. Bar 479320)
John Henry Thompson (D.C. Bar 90013831)
JONES DAY
51 Louisiana Avenue N.W.
Washington, DC 20001
(202) 879-3939

Samuel V. Lioi*
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939

*Counsel for Plaintiff
KalshiEx LLC*

*admitted *pro hac vice*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KALSHIEX LLC,

Plaintiff,

vs.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Action
No. 1:23-cv-03257-JMC

May 30, 2024
1:00 p.m.

Washington, D.C.

TRANSCRIPT OF THE MOTION HEARING
BEFORE THE HONORABLE JIA M. COBB
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff

JACOB M. ROTH, ESQ.
AMANDA KELLY RICE, ESQ.
JOHN HENRY THOMPSON, ESQ.
JOSHUA BROOKS STERLING, ESQ.
SAMUEL V. LIOI, ESQ.
Jones Day
51 Louisiana Avenue, NW
Washington, D.C. 20001

For the Defendant

ANNE WHITFORD STUKES, ESQ.
CONOR BARRY DALY, ESQ.
RAAGNEE BERI, ESQ.
MARGARET P. AISENBREY, ESQ.
Commodity Futures Trading Commission
Office of the General Counsel
1155 21st Street, N.W.
Washington, D.C. 20581

Court Reporter: Stacy Johns, RPR
Official Court Reporter

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription

P R O C E E D I N G S

1
2 MR. ROTH: Good afternoon, Your Honor. Jacob Roth
3 from Jones Day on behalf of Kalshi. And with me at counsel
4 table is Amanda Rice, Josh Sterling, John Henry Thompson and
5 Sam Lioi.

6 THE COURT: Good afternoon.

7 MS. STUKES: Good afternoon, Your Honor. My name is
8 Anne Stukes for the Commodity Futures Trading Commission. And
9 with me at counsel table is Raagnee Beri, Margaret Aisenbrey,
10 and Conor Daly.

11 THE COURT: Good afternoon, everyone. So we are here
12 on the parties' cross motions for summary judgment. I don't
13 typically have oral argument, although I thought this was a
14 case where argument would be helpful to me in resolving the
15 motions.

16 I don't know who's arguing for plaintiff. Is there a
17 time sensitivity in this case? I know there's not a PI that's
18 been filed, but I'm just trying to understand.

19 MR. ROTH: It was actually the first thing I was going
20 to say was thank you for hearing argument on motions. We
21 haven't asked for a preliminary injunction but there is time
22 some time sensitivity because the contracts are tied to the
23 November elections. So what we would like, ideally, is a
24 resolution that would allow, if needed, for appellate
25 intervention so that the contracts can be listed prior to that

1 election.

2 THE COURT: That was my preliminary question.

3 All right, I will start with plaintiff. I may
4 interrupt with some questions, but otherwise will try to
5 restrain myself to listen to your presentation.

6 MR. ROTH: Great. Thank you so much, Your Honor.

7 So as Your Honor knows we filed this case because the
8 Commission blocked Kalshi from listing its event contracts that
9 turn on partisan control of the House and the Senate. And the
10 question for the Court is whether that agency action complies
11 with the Commodity Exchange Act and the APA. And we've
12 reproduced on a slide here the text of the key statutory
13 provision from the Commodity Exchange Act. And as you'll see,
14 it authorizes the Commission to block, prohibit the listing of
15 event contract if two elements are satisfied.

16 First, the contract has to involve one of the six
17 enumerated categories of activities, and then if it does, the
18 Commission may determine that the contract is contrary to the
19 public interest, in which case it's prohibited. So far, I
20 don't think that's a point of dispute. That's just what the
21 statute says.

22 Following that framework, our challenge here has two
23 basic components. First, we do dispute that Kalshi's contracts
24 fall within the scope of those six -- any of those six
25 enumerated categories. And that's really just a matter of

1 statutory interpretation.

2 Then the second piece is that we argue that even
3 assuming the contracts did fall within one of those categories
4 that Commission's public interest analysis was arbitrary or
5 capricious.

6 THE COURT: I know I said I was going to restrain
7 myself, but can I ask just a preliminary question? I
8 understand your argument to be because of this two-step
9 framework that the statute sets forth, that if it's not in --
10 and I'll say enumerated, although the last one is a catchall --
11 but in not one of these categories then you don't even get to
12 public interest.

13 I noticed in your brief you had outlined some of the
14 safeguards that your client has put in into place with respect
15 to this contract in particular. For example, paid members of
16 congressional staff aren't permitted to trade, other
17 safeguards. I'm assuming that your client thought those were
18 important to maintain integrity of the process.

19 MR. ROTH: Correct.

20 THE COURT: But under your argument, because elections
21 don't fall, according to you in these categories, there's no
22 occasion for CFTC to even reach those safeguards. So
23 presumably someone could post an event contract similarly to
24 what your client does, another DCM could do this without any of
25 those safeguards, and it's my understanding that under your

1 framework, CFTC would not have any interest in that.

2 MR. ROTH: I agree that it wouldn't be relevant to
3 whether it falls within one of these statutory categories and,
4 therefore, this provision would not capture it. What I'm not
5 sure about and what I can ask is whether there are other
6 regulations or provisions that may --

7 THE COURT: Come into play.

8 MR. ROTH: Yeah, that may speak to issues like that,
9 like who's allowed to trade on it, are there certain
10 restrictions beyond this, sort of, in-or-out provision. Which
11 is just it's either allowed or it's not allowed.

12 THE COURT: On a similar vein, I understood one of
13 your positions to be, look, this is a contract involving
14 control of the House; it's not talking about a discrete
15 election between two candidates, there are so many intervening
16 factors that have to occur before -- not even intervening
17 factors but it's not often dispositive of one election, who
18 controls the chamber. Under your framework, though, would a
19 DCM be able to post an event contract for a presidential
20 election?

21 MR. ROTH: Yes.

22 THE COURT: Okay. So that piece is responsive or
23 relevant to what? Your point about this being a House, about
24 control of the House and that it's not, you know, a two-party
25 or two-candidate election, there's a lot of moving parts, what

1 is that relevant to?

2 MR. ROTH: Let me try to answer it this way.

3 THE COURT: Okay.

4 MR. ROTH: If you imagine that there was a category on
5 this list that said elections --

6 THE COURT: Okay.

7 MR. ROTH: -- then I think one could still say that
8 these contracts involve elections even though it's one step
9 removed from the election itself.

10 THE COURT: Okay.

11 MR. ROTH: Which goes to an issue that was sort of
12 debated in the briefs, which is does it have been to be
13 literally the underlying event or does it have to -- does this
14 underlying event just have to relate to the category.

15 We agree it's enough that it relates to the category.
16 So if you had the category that said "elections," even though
17 this was a couple steps removed, I think you could say it would
18 relate to elections and, therefore, fall within the scope. Our
19 main argument, though, is it doesn't say elections.

20 THE COURT: All right. Continue please.

21 MR. ROTH: Okay. What I was going to say before
22 moving on was I'm going to be speaking to the statutory
23 interpretation piece of the argument, and my colleague, Amanda
24 Rice, is going to be speaking to the arbitrary and capricious
25 piece when I'm done.

1 Looking to the enumerated categories, we can sort of
2 simplify by taking four of them off the list right off the bat.
3 The last one, as Your Honor noted, is a catchall. The
4 Commission is essentially allowed to add categories by rule if
5 they're similar to the listed five. The Commission hasn't done
6 that, so we can sort of cross that one off the list for now.

7 And then, obviously, the Commission does not argue
8 that these contracts involve terrorism, assassination or war.
9 They do think "involve" is very broad, but not broad enough to
10 get them quite that far. So we can strike two, three and four
11 from the list as well.

12 And that leaves the two enumerated categories that the
13 Commission focuses on, which are, number 1, unlawful activity
14 and then number five, gaming. And I'd like to take them in
15 that order, which is the order they appear in the statute.

16 THE COURT: Okay.

17 MR. ROTH: So starting with the unlawful activity, the
18 way we understand that is that it refers to contracts where the
19 underlying event relates to some unlawful act. Okay? So for
20 example, if you had a contract on whether the D.C. murder rate
21 in 2024 is going exceed a certain level, if you had a contract
22 on whether a particular piece of art in the National Gallery is
23 going to be stolen within a period of time, those are unlawful
24 acts. If you had a contract on those events, it would fall
25 within the scope of number one.

1 I think it fits the text and I think it fits the
2 context of the statute, and that's sort of an important point.
3 It aligns it with the terrorism, assassination and war
4 provisions that immediately follow it. If you think about
5 terrorism, assassination and war, the common denominator is
6 they're bad. Those are things we don't -- they're bad things.
7 Congress is concerned about people profiting from bad things
8 and about incentives to do bad things. Right?

9 Using my hypothetical of the D.C. murder rate, you
10 don't want somebody to go hire a hit man to get the rate above
11 a level so you can make money. Bad incentives. It also just
12 feels offensive to have people profiting from, you know, there
13 was a terrorist attack, I'm going to make a lot of money from
14 that. That's sort of the gist of 2, 3 and 4.

15 If you read 1 the way we read 1, it lines up perfectly
16 with that. We don't want to incentivize crime, we don't want
17 to have people profiting from crime, so it's all parallel.

18 And, of course, that interpretation doesn't sweep in
19 Kalshi's contracts. Elections are not unlawful. They don't
20 even relate to unlawful activity. So now let's consider the
21 Commission's interpretation.

22 As I understand it on this prong, what they're saying
23 is some states prohibit betting on elections, either as part of
24 their gambling statutes or in stand-alone provisions. And the
25 Commission admits that those state laws don't directly apply in

1 the sense that they can't prohibit trading on a regulated
2 exchange because of preemption principles. But the way I
3 understand what they're arguing is that they say, well, buying
4 and selling those contracts sort of amounts to a betting on an
5 election because you're staking something of value on the
6 electoral outcome. If you did that outside the context of a
7 regulated exchange, then it would violate these state laws and
8 therefore the trading of the contract relates to unlawful
9 activity.

10 So a couple problems with that. Number one, unlike
11 our interpretation, it doesn't align with the three that follow
12 it, because the key move that they're making there is instead
13 of looking at the underlying event and whether it is related to
14 the enumerated activity, they're looking at the trading of the
15 contract and whether it's related to the underlying activity.
16 That is a, sort of just a different focus of the analysis, and
17 it makes 1 sort of stand out relative to 2, 3 and 4.

18 THE COURT: Can I ask you about that, because I think
19 that this defendant made this point -- the government made this
20 point. Where it says "agreements, contracts or transactions
21 involved," what work do you argue "transactions" is doing in
22 the statute as it relates to involve?

23 MR. ROTH: As I understand it, the agreement, contract
24 or transaction sort of triplet, it appears throughout the
25 statute. It's just the way they refer to these types of

1 instruments when they define it. So I don't think that they
2 have independent significance. I think they're just capturing
3 any different way you might structure the arraignment.

4 THE COURT: So you're not reading transactions to
5 refer to the act of trading the thing, it's another way to say
6 contract agreement; it is the contract, itself.

7 MR. ROTH: It's the instrument, and I think that
8 follows from the fact that this is how it's used throughout the
9 statute, the three together.

10 And just to be clear, we're not saying that you
11 couldn't have a statute that said transaction involving X,
12 where what it meant was the act of contracting, it involves
13 that activity. It's not that that's semantically impossible.
14 It's grammatically appropriate, it makes sense; it's just that
15 it doesn't line up with the way the statute works for 2, 3 and
16 4, and so it makes it just an unusual, sort of strange way of
17 speaking.

18 The hypothetical I was thinking about as I was
19 preparing, you could say, my lunch generally involves a
20 sandwich, a salad, a pastry or robust conversation with my work
21 colleagues. You could say that, and yes, it could involve
22 those things, but putting them together in that way is weird.
23 It's not the way people normally speak.

24 But I actually don't think that's the most problematic
25 aspect of the Commission's reading of the unlawful category. I

1 think the most serious problem with it and the one that really
2 is, I think, fatal is that it proves way too much, because as
3 the Commission observes elsewhere in the briefing, there are a
4 whole lot of states that prohibit betting on any contingent
5 event.

6 If we go to the second slide -- we've collected
7 them -- there's at least 29 that we've found that prohibit
8 staking something of value on an uncertain event or
9 contingency, and of course, that defines an event contract. It
10 would mean that every event contract falls within the scope of
11 Roman I and would involve unlawful activity, and that just
12 can't be right because it makes the other five enumerated
13 activities superfluous. And it defeats the whole purpose of
14 having enumerated activities in the first place because it
15 would allow the Commission to subject every event contract to
16 public interest scrutiny.

17 So every kind of interpretation tells us that's wrong,
18 and so does the statutory history, because sort of notably,
19 prior to 2000, that is how the statute worked. If we go to the
20 next slide, we have that language. They actually have to make
21 this public interest determination for every contract. That
22 was repealed in 2000, and then in 2010 Congress enacted this
23 more limit provision that singles out the categories. So I
24 think anything that covers the waterfront is necessarily an
25 erroneous interpretation. I think the Commission actually

1 admits that. They say on page 11 of their final reply brief
2 that, sure, you can't read any of these to cover everything,
3 that would not be tenable.

4 And so they try to explain why their interpretation
5 doesn't do that. And just to be candid, I don't really
6 understand what they're trying to do there. To me, if Kalshi's
7 contracts involve unlawful activity because some states
8 prohibit betting on elections, then all event contracts involve
9 unlawful activity because some states ban betting on contingent
10 events. So I think the bottom line on number 1 is our
11 interpretation is the only one that sort of makes sense in
12 context that gives this provision real work to do without
13 swallowing everything else.

14 THE COURT: Can you respond -- and apologies if it's
15 in your reply, the Commission gave an example of a circumstance
16 in which they would say a contract involved war without the
17 underlying event actually being about war. And I think the
18 example they gave is whether the Ukrainian military will
19 acquire certain munitions in 2024. Can you speak to that
20 example? They're saying, well, that would be, under their
21 broader reading, involve something that relates to war, but the
22 underlying event in the contract is not, itself, an act of war.

23 MR. ROTH: That may have been our example. I'm not
24 sure, because I think we agree with that. It may have been
25 theirs.

1 THE COURT: Maybe it was your example, sorry.

2 MR. ROTH: I'm not sure it's a point where the parties
3 disagree. I think it goes to the difference between "involve"
4 and "based on."

5 THE COURT: I think that was your example.

6 MR. ROTH: So "based on" would speak literally about
7 the underlying event. That's too narrow for this, this says
8 involve, so there's this broader scope. Our point is that the
9 broader scope is tethered around the event.

10 THE COURT: Okay.

11 MR. ROTH: So you're still looking at the event and
12 saying does the event relate to unlawful activity, does it
13 relate to war, does it relate to terrorism. So you can sort of
14 game it by circumventing -- by sort of making it technically
15 something that's just a proxy, it would capture this.

16 THE COURT: I just wanted you to flesh that out.
17 Okay.

18 MR. ROTH: Okay.

19 THE COURT: So when they say that you're reading or
20 using the word involved too narrowly, you would dispute that.
21 You're not disputing that involve means relate to -- all those
22 other dictionary definitions of involve. It's just relates to
23 the underlying event in the contract.

24 MR. ROTH: It's what has to involve. We don't
25 actually disagree on what involve means; we disagree on what

1 has to involve what. Right? It's a subtle but important
2 point.

3 Okay, that takes us through Roman I. Unless Your
4 Honor has further questions about unlawful activity, I'll move
5 to gaming, which is the second one that they argue. Again, the
6 fight is about what does gaming mean in this statutory context.

7 Our core point is really simple: Gaming requires a
8 game. So if there's no underlying game, there's no gaming.
9 And so for example, if you have a contract on who's going to
10 win the Kentucky Derby, that's a game. It's a horse race, it's
11 a game. If you have an event contract on who's going to win
12 the Super Bowl or the point spread in the Super Bowl, it
13 involves a game. There's an underlying game. Same thing with
14 the lottery. They have an underlying game that forms the basis
15 for the contract. And if you read it and you understand it
16 that way, I think there are a number of benefits to that.

17 Number one, going back to what we were talking about
18 earlier, it lines it up with the others in the sense that there
19 is this connection back to the underlying event rather than
20 just talking about the act of trading in isolation.

21 Number two, I think is most consistent with the text.
22 The root word of gaming is game. I think it aligns with the
23 legislative history, the famous colloquy that gets a lot of
24 discussion in the briefing between Senators Feinstein and
25 Lincoln -- which by the way, if Your Honor wants to watch it on

1 C-SPAN, you won't be able to find it. I think it was inserted
2 in writing after the fact.

3 It wasn't literally a colloquy, but you can see it in
4 the congressional record, and they give three examples of
5 gaming contracts: Football, horseracing and golf. They're all
6 games. I don't think that's an accident. I think that
7 interpretation makes sense too, because what is a game? It's
8 something that has no inherent economic significance. It's
9 something that is done for amusement. It may be done for
10 sport. It may be done purely to facilitate the betting itself,
11 right, for its own sake.

12 So I think it makes sense for Congress to have thought
13 about that category. Contracts that involve games are probably
14 not the type of contracts that we want to be listed on an
15 exchange, because they don't have any real economic value to
16 them. But again, what's tying that together is the existence
17 of the game because the game is the thing that doesn't have
18 intrinsic economic significance.

19 Now, of course, elections are not games. They're not
20 done for amusement; they're not done for sport; they're not
21 done to facilitate betting. Elections matter. They determine
22 our government; they determine our governance. Nobody would
23 really call them games. So in our view a contract relating to
24 an election is not gaming.

25 THE COURT: I have never before this case considered

1 the difference between gaming and gambling, but I'd love to
2 hear more about your position on that, because I did look at
3 the various dictionary definitions just to understand what
4 these words mean that I have used many times. And there are
5 some definitions that you would say "cross reference" and they
6 say "define as" gambling.

7 So I understand your position to be, sure, gaming is
8 part of gambling, but gambling is not gaming -- or gaming is a
9 subset of gambling; gambling is not synonymous with gaming.

10 MR. ROTH: I do think that's the better understanding
11 of the way the terms relate. I think gaming has this more
12 close tie to the game, whereas gambling can have a broader
13 meaning.

14 I will say when I went through the dictionary
15 definitions closely, what I found was -- I think this is
16 important. Even if you look at the definition of gambling,
17 there's generally two different definitions that are offered in
18 the dictionaries. There's a narrower one and there's a broader
19 one.

20 So for example, the Merriam-Webster, the first
21 definition of gamble is "to play a game for money or property."

22 The second definition is "to stake something on a
23 contingency or take a chance." Okay?

24 So you've got one definition that is tied to a game
25 and then one definition that is not tied to a game. And the

1 same is true of the Concise Oxford English Dictionary -- which
2 I think is also cited in the briefs -- two definitions of
3 gamble. Number one: Play games of chance for money.

4 Number two: Take risky action in the hope of a
5 desired result.

6 I think that's sort of fair, there are two different
7 ways of understanding gambling. One is tied to the existence
8 of a game, and one is just colloquially sort of broader, right,
9 a betting. I think what's important here is that the broader
10 definition does not work for the same reasons we talked about
11 earlier. If you sort of adopted and imported the broader
12 definition of gambling and treated any contract that involves
13 staking something of value on a contingency or an uncertain
14 outcome, then you've covered the waterfront of event contracts.
15 And so that can't be the right interpretation of gaming in the
16 statute. And I think that leaves us with the narrower
17 interpretation in the dictionary, which incorporates the
18 concept of a game.

19 Now the CFTC, they recognized this problem with the
20 broader definition and actually not -- I didn't fully
21 understand this from the order, but from the briefing it became
22 clear. They're sort of disclaiming the broader definition,
23 because they understand that that doesn't work in context. And
24 so instead they're sort of offering a intermediate approach
25 where they say, well, it does require betting on a game or a

1 contest, and then they say an election is a contest. So voila,
2 there we go. It fits.

3 In the brief we walk through each step of that logic.
4 What I'd like to here is offer a few higher-level observations
5 on that argument, because when you take a step back,
6 especially, I think it's just too clever by half. It's sort of
7 this lawyerly attempt to parse it and get it in. It's not
8 really a serious attempt at statutory interpretation. I'll
9 just offer a few reasons for that.

10 Number 1, if Congress was really trying to get at
11 election contracts, the easy way to do that would have been to
12 have a Roman VI or VII that said "elections." Very easy. One
13 word.

14 To say that they were trying to do it by saying
15 gaming, which some definitions cross reference gambling, which
16 you could say involves a game or contest, it's the most
17 attenuated way of getting at this. So strained that I don't
18 think it's very credible.

19 Second point is there's no support for this in the
20 legislative history. The colloquy, again, it's all games,
21 nothing about politics.

22 Third, if you look at where they're getting the word
23 contest from, it's really instructive because they pull it from
24 a few state statutes. And if we pull up -- we've got the text
25 of a couple of the samples of those. But it's very clear when

1 you look at them that they're talking about contests that are
2 like games.

3 So for example, this is the Delaware -- their version
4 which is also materially identical to Florida -- and they talk
5 about betting or wagering on the result of any trial or
6 contests wherever conducted of skill, speed or power, of
7 endurance or human or beast.

8 I suppose there are some candidates for office who may
9 be described as beasts, but it's really not -- I just don't
10 think anyone would say in this context of the statute contest
11 means election, just like you wouldn't say in the context of
12 the statute that trial means a trial in this courtroom. That's
13 not what this is about.

14 Same thing if you look at the next -- this is the
15 Louisiana version, talks about conducting as a business any
16 game, contest, lottery or contrivance. When you put game and
17 lottery next to contest it, I think, implies a certain meaning,
18 and treating that as including elections is really a stretch.
19 I think we wouldn't -- we don't dispute that you can refer to
20 an election as a contest, just like you can refer to a
21 corporate board fight as a contest. You could refer to a
22 lawsuit as a contest. But in the context of these gambling
23 statutes, that's not what they are talking about.

24 And then the final point on this is I think it just
25 leads to some really arbitrary results, because if you focus on

1 gaming as involving a game, then there's a certain sense to it,
2 right? As I said earlier, like games don't have any external
3 economic significance, generally speaking, so as a category it
4 makes sense for Congress the carve that out.

5 If you treat it as games plus elections, it's very
6 strange because it means you could have event contracts on the
7 weather, on whether somebody's going to be nominated for a
8 cabinet role, on what color dress Taylor Swift is going to wear
9 next week. Any of those are fine, but elections would be swept
10 up by the gaming category. It's just weird because even if you
11 think, look, elections are different and should be treated
12 differently. And I know my colleague is going to try to
13 explain why that's misguided, but even if you accepted that, it
14 has nothing to do with the word "gaming."

15 So I think the, sort of, takeaway is the Commission is
16 latching onto this word as sort of a convenient way to squeeze
17 its desired policy outcome into the statute, but it's not a
18 serious attempt to really understand what Congress meant by
19 this term in this context.

20 THE COURT: When you're saying, and I would agree,
21 that a game doesn't have any external economic significance,
22 how does that -- how is that relevant for the specific argument
23 you're making? What exactly do you mean by that?

24 MR. ROTH: What I mean is if we're trying to think of
25 what was Congress trying to get at with gaming --

1 THE COURT: Okay.

2 MR. ROTH: If we understand gaming to mean a contract
3 that involves an underlying game, then there's a certain policy
4 sense to treating that category differently, because Congress
5 could have been thinking about it and saying well -- there is
6 some of this in the legislative history, the colloquy, if you
7 look at it -- well, games don't matter in the real world;
8 they're games. So we don't want people essentially gambling,
9 right, on something that doesn't matter in a CFTC-regulated
10 exchange. So it gives some sense to the categorization that
11 Congress laid out. And the problem I have with the alternative
12 interpretations is they don't have that, sort of, unifying
13 policy rationale behind them. Right?

14 Again, the really broad version sweeps up everything;
15 that doesn't work. And then games plus elections, what is
16 tying those things together? It's not, it doesn't seem to me,
17 a line that you could really seriously draw from this word. So
18 that's what I'm trying to get at.

19 THE COURT: Okay.

20 MR. ROTH: Okay. So that takes care of Roman V, and
21 so our position is that is then the end of the analysis and
22 there's no need to go any further, but I will turn it over to
23 my colleague, if Your Honor has no further questions on this
24 piece, to address the arbitrary and capricious issue.

25 THE COURT: There are a lot of references by the

1 Commission about kind of representations on your client's
2 website about what it does. Do you want to respond to that?

3 MR. ROTH: I think it's a page that just pulls press
4 articles.

5 THE COURT: Okay.

6 MR. ROTH: So it's just like a collection of links to
7 articles that have mentioned Kalshi. It's not like a
8 representation by the client about what --

9 THE COURT: What its business is.

10 MR. ROTH: It's like here, people are talking about
11 us. Here's a list of stories.

12 THE COURT: Okay.

13 MR. ROTH: Thank you, Your Honor.

14 MS. RICE: Good morning, Your Honor. My name is
15 Amanda Rice, and I'm here to talk briefly about the
16 Commission's public interest analysis. As my colleague
17 explained, we think the statutory issue is dispositive, so you
18 don't have to go this far, so I'll try to keep it pretty quick.
19 But even if you disagree with us on the statutory argument,
20 they are still required here because the Agency's public policy
21 analysis was arbitrary and capricious.

22 I'll start with just a brief note on the standard of
23 review. There was some back-and-forth on this issue in the
24 brief, but as I think the Commission acknowledges in the end,
25 the arbitrary and capricious standard applies to all final

1 agency actions regardless of their form. That's a deferential
2 standard for sure, but it has some real teeth. It means
3 agencies have to engage in reasoned decision making, and agency
4 actions are arbitrary and capricious if they apply the wrong
5 standard or ignore relevant considerations or they don't
6 explain themselves reasonably.

7 Those are the kinds of arguments we're making here.
8 And they go to both sides of the public interest analysis, the
9 sort of benefits on the one hand and the alleged harms on the
10 other. So I'll take those two points in turn starting with the
11 benefits.

12 (Court reporter clarification.)

13 MS. RICE: I was trying to be quick but don't want to
14 speak too quick.

15 THE COURT: Take your time.

16 MS. RICE: So the economic benefits all follow, I
17 think, from one simple proposition, which is that partisan
18 control of Congress has economic implications. I think that's
19 pretty commonsensical, but there's a ton of evidence in the
20 record to support that point. I've just got a couple of points
21 highlighted on the slides here. The first one is from Harvard
22 professor, Jason Furman who's a former chairman of President
23 Obama's Council of Economic Advisors. He explains that
24 Congressional control impacts legislation, policy and the
25 business environment in ways that have direct economic

1 consequences to businesses and workers. He says this risk is
2 conceptually identical to climate risk, business interruption
3 risk and other risks that can be managed using financial
4 markets.

5 On the next slide we've got managing director of
6 JPMorgan, so coming from a different perspective, who explains
7 that election risk is one of the largest risks that their
8 clients face, that they frequently engage proactively on how to
9 minimize it or to hedge it. Hedging is a word, as I understand
10 it, for minimizing risk.

11 Mr. Lisboa gives the example of specifically the coal
12 industry, but there are a lot of other examples in the record
13 that stand out on different sides. So there's a software
14 company serving green energy businesses. It's at page 1597 of
15 the record. There's a recycling robotics firm. That's at 1533
16 of the record. These are just sort of common sense examples of
17 businesses that have direct control of partisan control of
18 Congress.

19 And then take it from Sam Altman who's the CEO of
20 OpenAI. He explains here the different risks that biotech
21 companies face. Those are direct and they're predictable. He
22 explains they involve everything from the FDA and different
23 approvals to research, funding and legislation. So it's not
24 just legislation, there's all kinds of other things that
25 Congress is doing here.

1 Because these risks are so significant, financial
2 institutions already offer projections on the economic impacts
3 of elections, and there's instruments for hedging against those
4 risks. You've already seen it from JPMorgan. There's more
5 examples of that on pages 42 to 44 of the record, if that's
6 helpful.

7 And then there are the noneconomic benefits.
8 Researchers, policymakers, the public, everyone benefits from
9 market-based data about elections. These markets already
10 exist. I know Your Honor is familiar with in nonprofit forms
11 because this information is so valuable. So these are just a
12 few examples from the record. But that's really just tip of
13 the iceberg. I thought pages 40 and 41 of our opening brief
14 and 68 to 70 of the record really tell this story of the
15 noneconomic benefits.

16 So the agency doesn't have much to say about either of
17 those two points, so they respond mostly by trying to move the
18 goal post. They make what I understand to be two primary
19 arguments. The first one is about direct effects. They say
20 that the economic effects of elections, sure, that they exist
21 but they're not direct enough. I think Your Honor is using the
22 language of too many intervening events to make a difference.

23 We explained in our brief that the record says
24 otherwise. You've already seen some examples today. I think
25 more important and more fundamental is the idea that the whole

1 point of having hedging with event contracts is to account for
2 diffused risks. This is not a one-to-one kind of hedging
3 product like the way insurance works. If there's a hurricane,
4 for example. That example helps me because you can see both
5 the direct and indirect effects of a hurricane, right? It
6 might destroy property, but it does other stuff too. It deters
7 tourists. You can't always predict exactly what those effects
8 might be, but it's a feature, not a bug of these contracts.
9 They allow you to capture anything that might follow from an
10 event like this.

11 THE COURT: If I can just stop you right there. So
12 what I understood the argument on the other side to be is
13 certainly if a hurricane hit, the extent of the damage or
14 effect on tourism or property, that might not be able to be
15 predicted in advance. So whatever your worst fear might not
16 materialize, but whatever effect there is will be direct.
17 Meaning to the extent that there is property damage, you can
18 trace that directly to the hurricane. So maybe the result
19 doesn't materialize in the way that it was predicted, but there
20 is a direct effect.

21 And my understanding is that, at least they would
22 argue, with elections, particularly in this context where we're
23 talking about control of a chamber of Congress by a party that,
24 sure, whatever thought about what might happen may not
25 materialize, but to the extent there is an effect, you may not

1 be able to trace it directly to who controls a party at a given
2 time or a chamber of Congress at a different time because there
3 are so many variables: Who's in office as president, kind of
4 what the split is, if it's a more even split, kind of what the
5 priorities are of Congress. Despite control, legislation
6 doesn't always get passed or become a priority.

7 So what would you respond to their point about this
8 not being the kind of direct economic effect that some of the
9 other trading contracts have?

10 MS. RICE: I think you're right about what their
11 argument is, but I think both pieces of it are wrong. And
12 starting with the hurricane example, I think hurricanes do have
13 very similar indirect effects, so you're talking about property
14 damage. But that's not it. There might also be decreases in
15 tourism that might also have to do with other features of the
16 weather, did an amusement park get built nearby. Things like
17 that might also affect tourism. It's not going to be
18 one-to-one. There's actually a pretty helpful chart on pages
19 53 to 55 of the record that identifies some other event
20 contracts and tries to explain exactly that point: Here are
21 the ways in which the economic impacts are not direct; they're
22 indirect. And that's true of temperature fluctuations. So is
23 it going to be hot in California this month, that might have
24 some direct effects and then some indirect effects. That's the
25 first piece of it the way other contracts work.

1 The way Congress works, there's also a lot of evidence
2 in the record that there are direct effects here. That just
3 the election, a change of control in Congress affects stock
4 prices immediately, affects the valuations of entities
5 immediately without any legislation passing; that legislation
6 passing is, of course, a piece of this, but these economic
7 impacts happen even if no legislation passes.

8 So I thought the discussion at 40 to 46 of the record
9 is pretty helpful on that. It has some examples. I'll point
10 to 1397, which shows that the green energy sector surged as a
11 result of the democratic party senate takeover. Again, before
12 anything happened, it's just control of Congress that has these
13 direct effects.

14 So to circle back to your question, I think direct
15 effects is a strange question to be asking for these contracts
16 but not others when all event contracts have these sort of
17 indirect economic effects. But even if that were the question,
18 I think it's pretty clear that there are direct effects here,
19 if that answers your question.

20 THE COURT: Maybe you're about to get to this. I
21 don't want to distract you from your presentation, but can you
22 speak to the manipulation and integrity piece, because I do
23 think -- and obviously I'm going to look very closely at the
24 statute and follow what it says, but I do think there is kind
25 of a -- just to be honest, a gut reaction that people might

1 have that, wow, betting on elections doesn't seem like a good
2 idea. It seems like there's a lot of room for manipulation,
3 for kind of unsavory things happening.

4 Can you speak to that directly and what your position
5 is as it relates to the public interest concern? Because I
6 understand a significant part of the Commission's view that
7 this is against public interest has to do with some of those
8 concerns.

9 MS. RICE: Absolutely. I'll skip right there. I
10 think you're right that that's what the Commission said, that
11 it sort of feels icky or that there's a risk of election
12 manipulation in some form. And I think starting with the risk
13 of manipulation, which I think is the more serious public
14 interest analysis, the icky feeling I think is misguided, but I
15 think it stems from the misunderstanding that these contracts
16 could influence elections in some way or people will be buying
17 votes or things like that.

18 So I guess I'd start by pointing out that political
19 event markets have existed forever, in unregulated forms but
20 also in other democracies. And I don't think there's a feeling
21 in those places that somehow the existence of these markets
22 affects the integrity of elections. Then there's good research
23 in the records showing that this kind of manipulation is not
24 remotely plausible.

25 I found the comment from the Center for Effective

1 Altruism particularly helpful at this point. That's at pages
2 1427 to 1436 of the record. Kind of take each aspect of the
3 election manipulation arguments and unpack them one at a time
4 and explain why they're wrong.

5 At that time most basic level I think the key point is
6 that people try to influence elections because they matter.
7 They matter for our lives, they matter for their economic
8 effects, but for lots of other reasons. And so there's lots of
9 money and effort spent on influencing elections. That's what
10 campaign finance fights are all about.

11 And there's a way in which you might think that some
12 of that's icky, or you have the same reaction that spending
13 money to try to get elections is icky, but I think it's
14 important here to point out how much money and how many
15 incentives there are in these elections because it makes
16 manipulation seem pretty darn unlikely, particularly as Your
17 Honor pointed out at the beginning, that this is a contract
18 about control of Congress. I think this is another place where
19 that point is relevant. So it's not particularly relevant to
20 the statutory analysis, but on the public interest piece, if
21 you're asking what's the public interest here, we're looking at
22 this specific contract and asking whether there's a serious
23 public interest harm on the other side, if there's some
24 possibility that having a regulated event contract market as
25 opposed to the unregulated ones that already exist could result

1 in manipulation of control of Congress.

2 It's just pretty hard to imagine -- I think if there
3 were a way to manipulate control of Congress, someone would
4 have tried. It's hard to imagine that the event contract
5 market could change all of the profound incentives that already
6 exist. It sort of circles back to the initial point that
7 elections matter, they have real life consequences and that's
8 why people try to impact elections. I think the record is
9 pretty clear that the possibility of manipulation is just pure
10 speculation; that there's not evidence supporting that sort of
11 intuition that you came up with at the beginning that there's
12 something that feels a little bit strange about that.

13 One last point, I think the Commission suggested, too,
14 it would have to police elections if it approved these
15 contracts. My response to that is just the Agency regulates
16 contracts that have underlying events of all kinds. So an
17 event contract on power plant emissions doesn't mean the CFTC
18 has to become the EPA all of a sudden and regulate power plant
19 emissions. In the same way that an event contract that has to
20 do with stock prices doesn't turn it into the SCC, all the
21 Agency does is the same thing it does in any other context, it
22 just regulates the market, not the underlying activity. So
23 insomuch as that's the other aspect of this, that there's a
24 concern about manipulation and there's a concern about the
25 Agency and what it would have to do as a result, I think

1 there's no real reason to worry that its role would be any
2 different here than it is in any other context.

3 THE COURT: Do you have anything to add to what your
4 colleague was saying when I asked the question about the
5 particular safeguards that your client has put into place and
6 obviously deemed important? For example, the one that sticks
7 out is, well, if you're a paid member of a congressional staff
8 then you obviously cannot trade these contracts. And there are
9 other safeguards that were put into place, but as I understand
10 your position, the Commission wouldn't reach that because it's
11 not enumerated in the statute so there would be no public
12 interest inquiry, and so those kind of conditions or safeguards
13 would not be required, nor is the fact that this is an election
14 contract involving control of the House particularly relevant.
15 A DCM could have this event contract for the upcoming
16 presidential election, right? So those things that you point
17 to as evidence of, well, there are safeguards in place and this
18 is about control of Congress, that's not really relevant to the
19 statutory question, correct?

20 MS. RICE: You're right that it's not part of the
21 statutory question. It is relevant to the public interest
22 analysis, if you get that far. If you assume that we lose on
23 the statutory analysis, which we don't think is the right
24 answer here, but if you get to public interest so this is a
25 gaming contract or unlawful activity contract, then you're

1 looking at the public interest and it is relevant the kinds of
2 safeguards we have in place and the fact that this is a
3 contract involving --

4 THE COURT: I guess that's my point, if under your
5 reading you wouldn't get to the public interest, so that's my
6 point, the Commission would have no ability or interest in
7 considering the fact that a contract didn't have such a
8 safeguard.

9 MR. ROTH: I didn't want to cut you off, but I had to
10 ask my colleague who actually knows the statutory framework
11 better.

12 THE COURT: Okay.

13 MR. ROTH: What he clarified for me was that there are
14 separate antifraud provisions, anti-manipulation provisions and
15 what they call the core principles that you have to comply
16 with. And so that's where some of these other safeguards come
17 from. It's just not from this particular statute.

18 Sorry, I didn't mean to --

19 MS. RICE: No, no, no.

20 THE COURT: Let me just make sure I understand.
21 You're saying it's not implicated by this statutory provision
22 that's at issue in the lawsuit, but as part of this scheme,
23 generally, there's other safeguards. And these are statutory
24 from the Commission, meaning that you have to comply with these
25 provisions?

1 MR. ROTH: Right. That's right.

2 THE COURT: Okay.

3 MS. RICE: That's all consistent with my
4 understanding, and there's some stuff in the record on this,
5 too. Pages 80 to 88 of the JA and 99 to 100, we talk about the
6 core principles and the kind of background rules in place just
7 to be a regulated market that this CFTC regulates, you have to
8 have these protections. You listed out the specific people
9 that aren't allowed to trade, and all of that is exactly right,
10 but there is separately and for all contracts a prohibition on
11 any insider with any non-public information trading on these
12 contracts. So that's in addition to the
13 specifically-enumerated categories.

14 THE COURT: That makes sense. And that applies to any
15 of these event contracts?

16 MS. RICE: Exactly. To everything. So where there is
17 insider trading or manipulation, the Agency has the tools to go
18 out and investigate those things. They're just not relevant to
19 the statutory analysis in the first instance, if that makes
20 sense.

21 Unless you have anything further, Your Honor, I'll
22 just wrap up by reiterating that I don't think you need to get
23 to public interest, but if you do, you still should vacate the
24 order as arbitrary and capricious.

25 THE COURT: I do have another question. I don't know

1 whose, so I will let whoever answer this. There is something
2 in the Commission's brief that I thought was -- it's this
3 point: Unlike many hedging and risk management contracts, the
4 payout on the contract at issue here is not in any way tied to
5 actual or estimated losses incurred elsewhere and a loss on the
6 contracts is not offset by a gain elsewhere. I just thought
7 that was interesting and wanted your response to that.

8 MS. RICE: I don't think that's as unusual as the
9 Commission makes out. The example that comes to mind
10 immediately is the temperature-related contracts. I think that
11 works in the same way, that that's not a gain or a loss
12 necessarily. It's not clear even which way that cuts. There
13 may well be other examples, but my immediate reaction to that
14 is I don't think that's particularly unusual in this context.

15 THE COURT: I'm learning more about this market
16 through this case, but this whole futures market, it seems to
17 me it's grown beyond the days in which only those who are
18 interested in the commodity or directly affected are
19 participating. I mean, that's the case for all these
20 contracts, right?

21 MS. RICE: That's true of all the contracts. In fact,
22 I think as the Commission's order, I think, acknowledges, some
23 amount of speculation or people who are investing in these
24 instruments to make money is actually necessary for the markets
25 to be liquid, because if it was just hedgers, if it was

1 100 percent hedgers, you don't actually get someone willing to
2 balance out the price and sell you or buy from you at the other
3 side.

4 So there are people in all of these market who don't
5 have a direct hedging interest, but the hedging piece of it is
6 certainly meaningful, and potentially more meaningful in this
7 context than many of the others.

8 THE COURT: Is there anything else you want to say
9 about their economic purpose test? I'm trying to see what the
10 daylight between the two parties is with respect to that test
11 and how it's applied.

12 MS. RICE: So I think we agree that the Commission has
13 discretion to consider the economic impacts of these contracts,
14 that this statute and these instruments are about economic
15 benefits. I think where we diverge is the Commission's focus
16 on, sort of, two things. One is direct effects as opposed to
17 indirect effect, we talked about.

18 And the other is this predominately hedging or more
19 than occasional hedging.

20 THE COURT: That's what I meant.

21 MS. RICE: The language shifts in the order, and I
22 think the difference probably matters. Occasional sounds to me
23 like something less than predominant. I'm not entirely clear
24 which one the Commission is advocating for. So I think part of
25 the problem with that standard is that it's not clear what it

1 means, whether it means a certain number of uses, how many
2 dollars are going to be spent in a hedging way, is it a
3 proportion of uses, is it some combination of the two and how
4 much is occasional. I don't know that you need to get into
5 that, Your Honor, because I think by any metric, the record
6 shows there will be more than occasional uses here. But I
7 think those are the two points on which we really disagree, not
8 on whether economic benefits are relevant.

9 THE COURT: The same question. I don't really
10 understand there to be a dispute about my standard of review
11 here and what the applicable review framework is.

12 MS. RICE: I agree with that, Your Honor. There was
13 some back and forth about rule-making cases versus adjudication
14 cases. Ultimately the standard is arbitrary and capricious for
15 both. There are more rule-making cases, and this proceeding is
16 a bit unusual in that there were formal comments accepted and
17 considered, which doesn't turn it into a formal rule-making.
18 That's never been our argument. But it looks a little bit more
19 formal than informal adjudication does, but you're right that
20 the standard is the same.

21 THE COURT: All right. Thank you.

22 MS. STUKES: Good afternoon, Your Honor. To
23 reintroduce myself, I'm Ann Stukes on behalf of the Commodity
24 Futures Trading Commission. As we did in our briefs, I'm going
25 to refer to my agency today as the CFTC, or the Commission.

1 And I'll refer to the plaintiff simply as Kalshi.

2 I have about an hour's worth of remarks for Your Honor
3 today, if that is okay with you.

4 THE COURT: We may take just a court reporter break at
5 some point, so I'll let you get started.

6 MS. STUKES: Thank you. Any time you want me to jump
7 to an issue, please just let me know.

8 THE COURT: Could I just ask you something I'm curious
9 about to start?

10 MS. STUKES: Absolutely. Sure.

11 THE COURT: With respect to this catchall category,
12 the Commission specifically didn't make an argument that this
13 contract falls within the catchall, and I was just curious as
14 to -- I'm not saying it does, I'm just curious as to why that
15 wasn't the position of the Commission.

16 MS. STUKES: In considering the case that was before
17 it, the Commission examined these contracts and determined that
18 two categories applied, enough to bring it within the statute
19 and therefore didn't reach any further categories.

20 THE COURT: Okay.

21 MS. STUKES: So as the Court is aware, the CFTC's
22 order that's at issue in this case determined under CEA section
23 5CC5C -- I call it 5CC5C, I'm talking about the same statutory
24 language that's codified at 7 U.S.C. 78-2. The CEA is, like
25 many statutes, sort of odd where sometimes our statutory

1 sections don't line up with the codification.

2 In any event, the order at issue here determined under
3 CEA 5CC5C, that Kalshi's proposed Congressional control
4 contracts should not be offered on Kalshi's platform because
5 the Commission determined that those contracts were contrary to
6 the public interest. And we submit that this Court should
7 conclude that the Commission's decision was not arbitrary or
8 capricious.

9 The Commission's decision addressed four principle
10 issues that the parties have briefed and I will discuss today.
11 First, how does the word "involve" apply to activities
12 enumerated in the statute.

13 Second, do these proposed contracts involve the
14 enumerated activity of gaming.

15 Third, do the contracts involve the enumerated
16 activity of activity unlawful under state or federal law.

17 And four, are the contracts contrary to public
18 interest.

19 Before I get into the substance of each of these
20 issues, I want to emphasize that the Commission's order is an
21 informal adjudication, and Your Honor just asked about the
22 standard of review. This is not a rule-making and it's not
23 even a formal adjudication, and that means in practical terms
24 that the Commission was deciding just one issue, whether these
25 particular proposed contracts should be listed on Kalshi's

1 event contracts platform. And the Commission didn't purport to
2 address any other question larger than that. So for instance,
3 the order doesn't establish the full metes and bounds of how
4 the statute might apply to any other event contract other than
5 the ones that were before it.

6 THE COURT: And just for my own information, is it
7 typical for the Commission to solicit comment in a circumstance
8 like this?

9 MS. STUKES: It's not required. It did so, I think,
10 in an abundance of caution.

11 THE COURT: Is that an unusual event or not unusual?

12 MS. STUKES: I don't want to say something misleading,
13 especially without talking to my colleagues about how
14 frequently have we done this. I wish I had a better answer for
15 Your Honor.

16 THE COURT: It's more out of my curiosity.

17 MS. STUKES: I can see why. I think the Commission
18 did it really in an abundance of caution because of public
19 interest associated with this topic generally.

20 THE COURT: Okay.

21 MS. STUKES: I'm emphasizing that this is an informal
22 adjudication, because when Your Honor considers the question
23 before you, which is rather the Commission ran afoul of what's
24 required under the Administrative Procedures Act, the standard
25 of review is a lenient one.

1 The law requires only that the Agency acted within a
2 zone of reasonableness. Here the CFTC reasonably considered
3 the relevant issues and reasonably explained its position and
4 no more was required under the APA. The APA gives the Agency
5 deference on its predictive judgments and on its public
6 interest determination.

7 Now, there are questions of statutory interpretation
8 in this case. And Your Honor finds herself maybe in the
9 unenviable position of having each party in this case tell you
10 the statute is unambiguous, that the plain meaning advocated by
11 each side supports each side.

12 I submit that the Commission has the better of the
13 argument on what the statute means and how it applies on
14 involve, gaming and unlawful under state law, that the Court's
15 review on the statutory interpretation questions is de novo.

16 I'll get into now the first of the four issues that
17 are before the Court that are briefed in the party's papers,
18 and that is the Commission's reading of the word "involve" to
19 have its ordinary meaning to relate to or affect, to relate
20 closely, to entail or to have as an essential feature a
21 consequence.

22 These are the ordinary dictionary definitions of the
23 term, and that is the definition that applies because the term
24 involved is the -- the term involve is not defined in the
25 statute. And so case law has held for a long time that when

1 there's -- when the statute doesn't define the term, its
2 ordinary meaning applies and that means the ordinary meaning in
3 dictionaries.

4 So what that means for the statute here is that the
5 plain meaning of "involve" when we're talking about the
6 categories enumerated in the statute that would render an event
7 contract eligible for public interest review, the word
8 "involve" is broad enough by its plain meaning to cover event
9 contracts whose underlying, meaning the event on which the
10 contract is premised, here the outcome of congressional
11 elections. The statute is broad enough to cover contracts
12 where whose underlying involved the enumerated activity, as
13 well as contracts that relate closely, entail or have as their
14 essentially feature or consequence the enumerated activity.

15 THE COURT: I don't understand the plaintiff to
16 necessarily disagree with the definition that you've set
17 forward, but I think when you say that closely relates to or
18 entails, they're saying yes, to the subject matter or
19 underlying activity of the contract.

20 So can you just speak to that? Because I had thought
21 initially that there was some difference with how you were
22 defining involve. And now having heard from plaintiff and
23 going back and reading their brief, reviewing those portions of
24 the brief, I now see more clearly what they were saying, that
25 those definitions have to relate to the activity at issue

1 underlying the contract.

2 So if you could just speak directly to that.

3 MS. STUKES: That is generally my understanding of the
4 dispute between the parties here. And that is, as I understand
5 the plaintiff's -- and not to mischaracterize, but as I
6 understand the plaintiff's position, they're saying involve, if
7 it means anything, it has to mean that the underlying event
8 involves an enumerated activity and it can't be a broader
9 relationship involving the contract itself.

10 So when we look at the statutory language and whether
11 a contract is in the scope of the -- pardon me, of the statute
12 at all, it's a two-step inquiry. So the first step in the
13 statutory language is, does the agreement, contract,
14 transaction, or swap in an excluded commodity that is based
15 upon, based upon -- that means the underlying, based upon the
16 extent of an occurrence or contingency.

17 So step one in other words asks, is the contract based
18 on, does it -- is it based on -- is the underlying an event.
19 Because this -- pardon me -- this statute applies only to event
20 contracts. So step one under the plain language of the statute
21 which uses "based upon," meaning "underlying," in the same
22 sentence that it uses "involve."

23 Step one is is this an event contract at all, is the
24 underlying an event. If so, we're in the statute, at least
25 this far.

1 Step two is whether the agreements, contracts or
2 transactions involve the enumerated activity. And that's a
3 broader question than whether just the underlying event
4 involves the enumerated activities.

5 "Based on," as used in the statute, unambiguously
6 refers to the underlying event. It must be an event, that's
7 all.

8 "Involve" is broader. Any aspect of the contract,
9 transaction or agreement, if it involves an enumerated
10 activity, we submit that by the plain meaning of the word
11 involve it's in the statute. At least it gets you so far as to
12 be eligible -- that's the relationship between the contract and
13 the enumerated activities. If the contract, transaction or
14 agreement involves the enumerated activity, we're in the
15 statute. Underlying, what the contract is based upon, what the
16 actual event is can be, can -- the underlying can involve the
17 enumerated activities. They're fairly easy to think of
18 examples.

19 If the event contract is based upon whether a war will
20 break out, it's in an enumerated activity.

21 THE COURT: Is there an example of a contract that
22 under this broader definition that you're advocating for would
23 involve war where the underlying activity in the contract
24 doesn't speak to war, itself.

25 MS. STUKES: The examples are -- the examples of how a

1 contract could involve war but not involve an act of war have
2 to do, and I think both parties cite this kind of example,
3 will -- I hate to give these real world examples, will a
4 foreign body be able to use U.S. weapons on its enemy's soil,
5 something like that. That involves -- oh gosh, I don't want to
6 get too in the weeds -- will funding be allocated to a country
7 that's at war, that involves war.

8 THE COURT: I think they would say yes --

9 MS. STUKES: I actually don't think we're too off base
10 on that. I think the real dispute between the parties is what
11 are you looking at, what has to involve the enumerated
12 activities, and the real rub here is that the Commission
13 interprets the plain language of this statute to say if
14 transacting in the contracts, if the feature or purpose of
15 these contracts is one of the enumerated activities, gambling
16 is the one -- gaming, pardon me, is the one that comes to mind.
17 Is transacting in the contract, is that essential feature
18 gaming. And the Commission here said yes for gaming and for
19 unlawful under state law.

20 THE COURT: So what is your best argument for their
21 response that there are a lot of states, and they listed them
22 for me, that make any type of betting stakes on any contingent
23 event unlawful under state law such that that's what these
24 event contracts are? So every event contract should
25 theoretically -- if the transaction of the contract in and of

1 itself is what involve means and not the underlying activity at
2 issue in the contract, than just the mere transacting event
3 contracts would violate state law; how do you respond to that?

4 MS. STUKES: I want to say two things about that, and
5 I can jump to the discussion of how we analyzed unlawful under
6 state law. The Commission is not saying that involve in every
7 instance means anything other than its plain meaning. Let me
8 say that in a little more -- with a little better articulation.

9 Involve is a broad term. It's broad enough to cover
10 event contracts whose underlying is one of the enumerated
11 activities, and it's broad enough to cover an event contract
12 whose essential feature is one of the enumerated activities,
13 and here an essential feature of these contracts is betting or
14 wagering on elections.

15 THE COURT: But an essential feature of some other
16 contract could be betting or wagering on, fill in the blank.

17 MS. STUKES: Right. So your Honor's concern, I think,
18 is the plaintiff's argument: What do we do with this, what I
19 interpret as an extrapolation from what the Commission actually
20 said, to say, well, that would be absurd in another context
21 because other state laws say it's unlawful -- there are state
22 laws that say it's unlawful to wager on any contingent event.
23 And that would sweep in every event contract to a public
24 interest review.

25 THE COURT: Right.

1 MS. STUKES: So I'm just getting to my notes where I
2 have this.

3 THE COURT: Sure. Take your time.

4 MS. STUKES: The Commission had before it the question
5 of whether these contracts, which involve wagering on
6 elections, involve activity under state law. Here we have
7 numerous state laws that forbid wagering on elections, and that
8 was sufficient for the Commission to say state law forbids
9 wagering on elections. That's the essential feature of these
10 contracts, and we can stop there.

11 What the Commission didn't do is say state law forbids
12 or makes unlawful wagering on any contingent event. That was
13 not the basis of the Commission's reasoning, and even if you
14 can say if A is to B then C is to D, like some logical
15 extrapolation, that's not what the Commission did here. It
16 just said we see under state law that wagering on elections is
17 unlawful. And that's the essential feature of these contracts,
18 and that's enough. That's enough that we're in the zone of the
19 statute.

20 THE COURT: Right, but --

21 MS. STUKES: And it's not unreasonable -- I'm sorry,
22 I've interrupted Your Honor.

23 THE COURT: I just wanted to -- because right now I
24 think we're talking about what the meaning of the terms in the
25 statute are, and their argument, as I understand it, is that

1 the Commission's reading doesn't make sense; this is otherwise
2 unambiguous and they're applying this word in a way that kind
3 of means one thing in one subsection and another in another
4 subsection.

5 And what they're saying is elections is not on this
6 enumerated list and that's full stop, end of case. And you're
7 saying, well, no, it fits under the first category because
8 betting on or wagering on elections violates many state laws.

9 And their response is wagering on any contingent event
10 violates many state laws. And if that were the reading, if
11 that's how the statute was read, that would mean that every
12 event contract would be subject to this two-step review, which
13 was not the intent when the statute was amended to streamline
14 this process and not make the DCM have to make an initial
15 showing that the contract was in the public interest.

16 So I'm just speaking more about the unlawful under
17 state law. What does that mean? Does that mean that the act
18 of trading the contract is unlawful under state law, in which
19 case that would -- might relate to many contracts or all event
20 contracts, or does the underlying activity -- for example, I
21 think plaintiff gave an example whether or not some crime was
22 going to occur, whatever it is, some specific criminal
23 activity, where the subject of the contract relates to,
24 involves something that is unlawful.

25 So I just want to understand the difference -- your

1 response to that, that your reading would put every event
2 contract under this inquiry.

3 MS. STUKES: Respectfully, I don't believe that what
4 the Commission held in this order would subject every event
5 contract because what the Commission said is only that
6 examining these contracts, whose essential feature is to bet on
7 elections, that involves activity that many state laws
8 prohibit.

9 What the Commission did not say is these contracts
10 involve wagering on a contingent event and many state laws make
11 wagering on a contingent event unlawful. Therefore, it is.

12 THE COURT: Hypothetically, let's say I'm a plaintiff,
13 I'm a DCM, I want to post my event contract about whether or
14 not a hurricane will hit in Florida. And the Commission came
15 back and said this is against public interest and it also falls
16 under -- I'm doing this out of order. It falls under category
17 one because in Florida and elsewhere the state law prohibits
18 people from posting or making bets or wagering on contingent
19 events, and a hurricane is a contingent event and this contract
20 involves a wager on a contingent event, so we're not going to
21 allow it. Would that be allowed under this statute? Would
22 that work?

23 MS. STUKES: I think it would be an unusual reading of
24 the statute.

25 THE COURT: And why?

1 MS. STUKES: And it's because this statute sets forth
2 in broad terms the categories that are the subject of public
3 interest review, and none of those categories on their face
4 suggest that Congress intended to capture all event contracts.
5 And it --

6 THE COURT: Right, that's their point. I think that's
7 exactly what they're saying.

8 MS. STUKES: I think, actually, the parties agree. I
9 think where we're off is the Commission doesn't agree that
10 that's what it concluded in this case. It concluded that state
11 laws forbid wagering on elections, and that's an important
12 state interest that Kalshi is asking the Commission to
13 undermine by allowing these contracts to trade on a
14 federally-registered exchange -- a federally-regulated
15 exchange.

16 To be clear, the Commission's order didn't find
17 that -- like if these contracts were allowed, it didn't find
18 that purchasing one of Kalshi's congressional control contracts
19 would be illegal in jurisdictions that prohibit betting on
20 elections by statute or common law.

21 Kalshi argues that the Commission was arbitrary and
22 capricious or fell afoul of the law because it can't be illegal
23 under state law to offer the contracts on a market regulated by
24 the CFTC because Fransa (ph.). But that, as the Commission
25 held in its order, misses the point.

1 The CEA is a federal statutory regime for the
2 regulation of commodities derivatives markets, and it does
3 preempt state laws that prohibit the trading of commodities
4 contracts. No state law can ban a contract that's lawfully
5 listed on a CFTC-regulated market. But what Kalshi asks the
6 Commission to do here and what Kalshi is asking the Court to do
7 is to order the CFTC to permit these contracts, when Kalshi's
8 own website cites news articles that characterize them
9 repeatedly as election gambling, betting on elections, when
10 under state law it's illegal to gamble on elections.

11 And this, by the way, is the reason we're here. If
12 Kalshi could lawfully offer election-betting contracts on CFTC
13 markets, it could ignore any state law that disallows election
14 gambling. Even states that allow gambling prohibit betting on
15 elections. And that indicates that the concern is not so much
16 gambling but election integrity. You can't place a bet on an
17 election in Las Vegas or Atlantic City.

18 For the CFTC to allow the contracts, it would have had
19 to undermine these important state interests. And so when the
20 Commission concluded in its order that, in considering whether
21 a contract involves activity under state law, it considered
22 whether the activity is unlawful under state laws that are not
23 otherwise preempted by the CFTC, laws that go to state interest
24 that are not overlapping with the CEA's regulatory authority.
25 And when the Commission considers that it can consider whether

1 the CFTC's exclusive jurisdiction over federal commodities
2 markets, federal commodities derivatives markets, should be
3 used to subvert important state interests.

4 So this question of -- well, it's frustrating to me --
5 well, I'm an advocate, I should be frustrated by my opponent's
6 arguments. But what's frustrating to me about that is this
7 concept that the Commission's interpretation of the statute
8 doesn't make sense because some state laws make it illegal to
9 place a wager on any contingent event, it's a distraction.
10 It's not what the Commission held here.

11 The Commission went as far as it needed to go because
12 this is an informal adjudication. It's one case. Under a
13 different set of facts and a different proposed contract, it
14 might look to that language. It would be an unusual reading of
15 the statute to say because many state laws prohibit wagering on
16 any contingent event, that all event contracts are unlawful, it
17 would be an usual reading of a statute that sets forth only
18 enumerated categories.

19 THE COURT: I think they would agree with that.

20 MS. STUKES: Right. I think we agree on that.

21 THE COURT: Well, I don't think you want to agree
22 on -- if you do want to agree on that, I think you want to
23 distinguish that from the election.

24 MS. STUKES: No. What I am saying is the Commission
25 didn't base its decision on the existence of state laws that

1 make wagering on any contingent event unlawful. The Commission
2 based its decision on the existence of state laws that make
3 election wagering unlawful. It didn't consider in its decision
4 and it didn't base its decision on the existence of these other
5 broader state laws.

6 And so it doesn't even factor in to the review here.
7 Whether they exist or not, it wasn't the basis for the
8 Commission's decision. And even if you can extrapolate what
9 the Commission was not doing here -- the Commission wasn't
10 ruling here. It went only as far as it needed to go to decide
11 the issue before it. I hope that that is coming through to
12 Your Honor.

13 So here, because these contracts have as their
14 essential feature not that they're wagering on any contingent
15 event but they are wagering on the outcome of elections, and
16 wagering on elections is unlawful under numerous state laws,
17 the Commission was reasonable in its determination that these
18 contracts fit within that category of unlawful under state law
19 to render them at least in the statute in subsection I.

20 I can move on to talk about gaming, unless you want to
21 talk about --

22 THE COURT: Let's talk about gaming.

23 MS. STUKES: Okay. Again, with the term "gaming," the
24 Commission applied the ordinary meaning of the term "gaming" to
25 conclude that these contracts would fall within that enumerated

1 category. Again, "gaming" is not a defined term in the
2 statute.

3 And so what the Commission did reasonably is look to
4 its ordinary meaning as defined in dictionaries and in ordinary
5 meanings as defined in state law and federal law -- well, I'll
6 talk about that in a second. And concluded that it falls
7 within the ordinary -- that those proposed contracts, which
8 wager on the outcome of congressional elections, fall within
9 the meaning of "gaming."

10 First, the Commission looked at that the ordinary
11 dictionary definition of gaming and found that gaming in its
12 ordinary dictionary meaning is synonymous or interchangeable
13 with gambling. And that's actually supported in the
14 congressional record when we see that colloquy between Senators
15 Feinstein and Lincoln, where the first thing, I think, that
16 Senator Lincoln's comment says is this section of the CEA,
17 5CC5C, is intended to prevent gambling, using the futures
18 markets for gambling.

19 THE COURT: How do you define "gambling"?

20 MS. STUKES: Let me come back to the definition. So
21 "gaming" in ordinary dictionary definitions is synonymous with
22 "gambling." There's actually a Supreme Court case that we
23 cite. in our brief, also, for that proposition. They're
24 interchangeable terms.

25 THE COURT: Okay.

1 MS. STUKES: So what's gambling? The Commission
2 looked at various definitions under state law of how "gambling"
3 is defined. And a common thread in many state law definitions
4 of "gambling" is to stake something of value on a contest of
5 others. It's within a common thread, a frequently used
6 phrasing included in the definition of "gambling," staking
7 something of value on a contest of others. A number of states
8 linked the terms "gaming" or "gambling" to betting or wagering
9 on elections.

10 The Commission also looked at this Unlawful Internet
11 Gambling Enforcement Act, which has the definition of "to bet"
12 or "wager." Betting or wagering is a common definition of
13 "gambling." And in that statute wagering on a contest --
14 staking something of value on a contest of others is included
15 in the definition.

16 THE COURT: Can I ask you a question.

17 MS. STUKES: Yeah, absolutely.

18 THE COURT: Besides elections, in your view, is there
19 a contest of others that doesn't involve a game as plaintiff
20 would define what game means?

21 MS. STUKES: I actually thought the horse race wasn't
22 a game. But there are contests, Academy Awards, award types of
23 things that doesn't seem like a game, just seems like a
24 contest. So --

25 THE COURT: Okay. So an event contract on something

1 about one of these awards would fall under the gaming or
2 gambling prong?

3 MS. STUKES: First of all, I don't want to get ahead
4 of my Commission which -- the Commission didn't define it --
5 didn't define -- didn't talk about whether the -- in this order
6 didn't get into other examples because it was sufficient to
7 determine that elections fall within this ordinary definition
8 of staking something of value on a contest of others.

9 THE COURT: Right. I'm trying to make sure that I
10 understand what the terms mean in the statute. So it's
11 certainly relevant for me to understand how this would apply
12 even beyond this case, while I know I'm only looking at the
13 order in this case.

14 So based on what you said, an event contract about any
15 kind of contest, like an award show, Academy Award, Grammy's --

16 MS. STUKES: It's not a game. It seems like a
17 contest.

18 THE COURT: That would fall under the gaming prong.

19 MS. STUKES: Wagering on it, it sounds look it might,
20 yeah.

21 THE COURT: Keep going.

22 MS. STUKES: So one of the criticisms that Kalshi
23 levies at the Commission's decision here is they say that the
24 definition is gerrymandered because it includes only wagering
25 something or staking something of value on a contest of others.

1 And gaming can be so much more than that. Gaming can be games,
2 gaming can be so much more than that.

3 What the Commission did, however, is it looked at what
4 are these contracts. These contracts are staking something of
5 value on the outcome of elections. Does that fit in an
6 ordinary definition of gaming? We submit yes. Because gaming
7 is interchangeable with gambling and ordinary meaning of
8 gambling is to stake something of value on a contest of others,
9 and an election is a contest by its plain meaning.

10 Dictionary definitions define "contest" to include
11 elections. The examples that we cite in our brief talk about
12 the presidential election as a contest, the presidential
13 contest, meaning an election.

14 So "gaming" reasonably and plainly includes by its
15 plain meaning staking something of value on the outcome of the
16 contest of others. This might not be to the exclusion of other
17 types of gaming and gambling that were not at issue in this
18 particular matter. But these contracts are designed to wager
19 on the outcome of congressional elections.

20 THE COURT: But the definitions don't change based on
21 the contract at issue, right? The statute says what it says.

22 MS. STUKES: The statute says what it says.

23 THE COURT: And it's your role to determine whether --
24 if you undertake this type of review under the statute, then
25 you decide or make a decision as to whether or not the contract

1 fits the definition. So the definition doesn't change; it's
2 whether the contract fits the definition.

3 So it can't be -- I'm not going to find gambling means
4 contest here and then in another case be given a different
5 definition from the Commission about what gambling might mean
6 based on the contract at issue there. That's not what you're
7 suggesting.

8 MS. STUKES: What I am suggesting is that because this
9 is not a rule making, that the Commission's determination of
10 whether these contracts fit within the ordinary meaning of
11 "gaming" did not require the Commission to define "gaming's"
12 entire universe for it to determine that these contracts fit
13 within an ordinary meaning of "gaming."

14 THE COURT: I guess that's what I'm having difficulty
15 with because what I'm hearing you say is that there could be
16 many definitions and we pick the one applicable here. If there
17 are many definitions -- I hope no one is asking me to find this
18 is an ambiguous statute. This is not the time to deal with
19 ambiguities in statutory interpretation.

20 So I guess -- I mean, I hope that the Commission is
21 taking the position that "gaming" means X and that this
22 contract fits X because of whatever argument. You're not
23 saying that you're adding a contest here, but in other
24 circumstance you'd use another dictionary definition. There
25 should be a definition that applies that's unambiguous.

1 MS. STUKES: What the Commission found here is an
2 ordinary definition of "gaming" includes wagering on a contest
3 of others, because -- and that's not, as Kalshi puts it,
4 gerrymandering.

5 THE COURT: I can accept that.

6 MS. STUKES: That's deciding what's before it.

7 THE COURT: I can accept that in the dictionary there
8 may be one, two, three, and if it fits any of those prongs. I
9 just want to know the extent of what the definition of
10 "gambling" is under the Commission's view. So what you're
11 saying is it includes this contest of others. And so because
12 an election, in your view, is a contest of others, then betting
13 or wagering on that violates that provision of the statute.

14 MS. STUKES: Or at least brings it into that
15 enumerated category of the statute, yes.

16 THE COURT: Okay. But if there are other definitions
17 of gambling -- and I'm losing track of whether I saw it myself
18 or whether it's in the papers, but that would just say, for
19 example, you might have said it earlier, betting or wagering on
20 a contingent event.

21 MS. STUKES: On any contingent event.

22 THE COURT: On any contingent event. Would that mean
23 that every event contract involves gambling and, thus, gaming?

24 MS. STUKES: That's not what the Commission held here
25 and it's unlikely to be what the Commission would hold in

1 another context if it came up. But that wasn't the question
2 presented here.

3 So what was presented here was: Do these contracts,
4 which are routinely characterized as election-betting
5 contracts, fall within the ordinary meaning -- an ordinary
6 meaning of "gaming," where gaming is synonymous with gambling
7 and gambling includes wagering on a contest of others and a
8 contest of others includes elections. And that was enough --

9 THE COURT: Okay.

10 MS. STUKES: -- to be a reasonable interpretation of
11 the plain meaning of the statute.

12 We've talked about gaming and unlawful under state law
13 and involve, and unless Your Honor wants to talk further about
14 any of those subissues, I can move on to the public interest.

15 THE COURT: Sure. Yes, please.

16 MS. STUKES: Okay. So having determined that Kalshi's
17 proposed contracts involve two enumerated activities under the
18 statute, the Commission proceeded to determine that the
19 contracts are contrary to public interest and, therefore, are
20 prohibited from trading. And in making this determination, the
21 Commission considered the contract's economic purpose as well
22 as other factors. So I'll start with the economic purpose
23 evaluation.

24 So the parties point this out in our briefs, but our
25 statute here, the CEA, codifies two public interests in

1 commodities markets, hedging and price discovery. So hedging,
2 in general, means to use the commodity derivatives markets to
3 manage risk of price fluctuations in commodities. For example,
4 we put in our brief an example of an airline. They have to buy
5 jet fuel to operate their business and they have a price
6 sensitivity to movements in the price of jet fuel.

7 So a market participant who wants to hedge their risk
8 of price fluctuations, and they're worried that the price of a
9 commodity will go up, will hedge that risk by entering into a
10 commodity derivatives contract whose value will go up if the
11 price of that commodity increases. So in other words, hedging
12 means you can enter into a derivatives contract in a
13 CFTC-regulated market that will move in your financial interest
14 if the commodity that you're sensitive to moves against your
15 financial interest. That's hedging.

16 Price discovery, which is the other enumerated public
17 interest in the CEA and in commodity derivatives markets
18 generally, means to determine a price level for a commodity
19 based upon its pricing in a CFTC-regulated market. So for
20 instance, futures contracts on, like, agricultural commodities
21 can be used -- the trading on futures contracts can be used to
22 discover the price of the actual commodity in the cash market.

23 As noted in the order, the Commission considered the
24 public interest of Kalshi's proposed contracts and considered
25 their economic purpose. So this statute, 5CC5C, doesn't define

1 what it means to consider the public interest but because the
2 CEA itself codifies economic interests, in the years before
3 2000, when the CFTC examined every derivatives contract for
4 public interest, it looked at an economic purpose test that
5 asked whether a contract can be reasonably expected to be or
6 has been used for hedging or price basing on more than an
7 occasional basis. That was the test.

8 And the CFTC looked at that test in considering
9 whether these proposed contracts have an economic purpose, and
10 the CFTC also mentioned this colloquy between Senators
11 Feinstein and Lincoln in which Senator Feinstein asked if the
12 Commission would have the power to determine that a contract is
13 a gaming contract if the predominate use of the contract is
14 speculative as opposed to hedging or economic use.

15 So the Commission cited both of these formulations of
16 considering the economic purpose of the contracts in evaluating
17 these proposed contracts.

18 And it considered comments that Kalshi highlighted for
19 Your Honor that congressional control has economic effects.
20 And it considered comments from commenters that said they would
21 use these contracts to hedge.

22 But, as the Commission found, the economic effects of
23 one chamber of Congress or another are -- the word the
24 Commission used is diffuse and unpredictable. The price of
25 these contracts is not correlated to the price of any

1 commodity, and so the price of the contracts couldn't
2 reasonably or predictably be used to establish commercial
3 transaction prices for hedging or discovery.

4 THE COURT: Can I get a clarification? Is the test --
5 is it the more than occasional language or is it the
6 predominantly for commercial purpose?

7 MS. STUKES: The test -- the Commission evaluated
8 both. It looked at both and found that even considering the
9 comments that suggested -- pardon me, that these contracts
10 would be used for hedging purposes, most of the comments
11 suggested that the hedging uses were not really related to the
12 control of a single chamber of Congress, but rather the
13 ultimate changes in law or policy that could be affected many
14 steps down the line from control of a single chamber of
15 Congress.

16 So even taking all the commenters together who stated
17 an intent to hedge economic risk by trading these contracts, it
18 didn't establish that the contracts would be used for hedging
19 on more than an occasional basis.

20 But even if there were robust economic purposes for
21 these contracts, the economic purpose of the contracts was just
22 one aspect of the evaluation here, because a contract with
23 economic purpose, an event contract, even if it has an economic
24 purpose, it doesn't make it per se in the public interest.

25 There's an example actually in the colloquy of the

1 congressional record. You can have a contract on whether a
2 terrorist event will occur and it could be used for hedging,
3 even. If you're going to suffer an economic consequence from
4 that, it doesn't make it in the public interest. It doesn't
5 make it a good idea.

6 So the Commission here considered the alleged economic
7 purposes of these contracts and it found that these contracts
8 could not -- because control of a single chamber of Congress,
9 the impact for economic hedging is so diffuse, there are so
10 many steps that are involved between the election and actual
11 enactment of legislation, that the economic purpose of these
12 contracts did not weigh in favor of their public interest, but
13 it considered other aspects too.

14 I want to address one thing, that Kalshi argues that
15 the Commission imposed an arbitrary and capricious
16 direct-effects test. Stating that these contracts don't have a
17 direct economic effect, simply because a single chamber of
18 Congress doesn't itself have the power to enact law, is not an
19 arbitrary test. It's a description of the limited hedging
20 utility that these contracts would have.

21 But again, even if these contracts had a robust
22 economic purpose, other factors play in to the public interest
23 determination, and they did here. So I'll talk about election
24 integrity, unless Your Honor would like to talk about the
25 economic purpose --

1 THE COURT: I guess the only question is plaintiff
2 made an argument in their briefs, and I talked to them a little
3 today, about even putting aside any legislation that's passed,
4 just the mere fact of elections that dictate who is in control
5 of what chamber has maybe impact on the stock market or other
6 direct economic consequences that are real and tangible and
7 that can be observed in the aftermath of elections, and I
8 wanted to know what your response was to that.

9 MS. STUKES: My response is maybe something you've
10 already said, which is even if there are economic benefits to
11 trading these contracts, the Commission determined in its
12 discretion that those were not outweighed by the very serious
13 public interest --

14 THE COURT: So you don't dispute that?

15 MS. STUKES: I find that even if it's true, it doesn't
16 make a difference because the Commission was reasonable and not
17 arbitrary and capricious in its determination that the concerns
18 about election integrity here overwhelmingly are reasonable and
19 not arbitrary or capricious.

20 THE COURT: Okay. Let's go to the election integrity.

21 MS. STUKES: So factors including specific concerns
22 about election integrity supported the Commission's
23 determination that the contracts were contrary to public
24 interest, and the principal concerns that the Commission
25 identified included that these contracts could create monetary

1 incentives for individuals or organized groups to vote for
2 particular candidates for financial gain, to win a bet, not --
3 regardless --

4 THE COURT: And before you said to win a bet, I was
5 thinking you're describing what I think happens now in real
6 life in terms of the financial incentives of people putting
7 money behind elections and what motivates people to vote for
8 certain candidates is often financial in nature, right? But
9 you're saying specifically to collect on these event contracts.

10 MS. STUKES: These event contracts, their very
11 existence would establish -- could establish a financial
12 incentive to vote in a particular way that doesn't presently
13 exist because these contracts are not traded anywhere. You
14 can't gamble on elections. So they can incentivize voting in
15 particular ways that could influence how people vote.

16 THE COURT: How would we ever measure that?

17 MS. STUKES: Well, the --

18 THE COURT: The reason I'm asking is because I think
19 the plaintiff's argument is that concern is so unlikely to
20 happen it's -- and I thought that they made a good argument
21 today that there are already so many incentives, financial and
22 otherwise, behind elections that motivate people to do certain
23 things -- I mean, the point being that if there were some way
24 to get control over a -- if someone could figure out a way to
25 ensure control of a chamber of Congress, that probably would

1 have happened by now, right? So what is your response to that?

2 MS. STUKES: My response is the existence of a
3 federally-regulated derivatives contract on the outcome of
4 elections could incentivize people to manipulate either that
5 contract or the election itself for financial gain.

6 I'll give you some examples to talk about the kind of
7 thing we're concerned about. And I'm skipping ahead to the --
8 the order I was going to talk with you about these things.

9 The Commission is not just a regulatory agency. We're
10 also a law enforcement agency. And we're tasked under the CEA
11 with antifraud authority. And we're tasked under the CEA to
12 ensure integrity in the markets that we oversee. And because
13 of that, the Commission could be drawn in to investigating
14 manipulative conduct in these markets in a way that doesn't --
15 is outside of its ordinary mission.

16 So here's an example. A political activist with a big
17 social media following, they float a rumor on social media
18 damaging to a candidate who is important to one party's control
19 of the Senate. In a couple of weeks, this rumor spins up and
20 spins out and it turns out maybe it's untrue. It turns out to
21 be false.

22 But during the weeks that the rumor was circulating,
23 the congressional control contract on the other party goes up
24 and many people make a lot of money by selling that contract
25 when the market is high. And then the CFTC gets a tip and

1 says, well, that person put that rumor on social media in order
2 to manipulate the congressional control contract.

3 There's a couple of implications here. The very
4 availability of that contract has added one more reason, and
5 maybe a big reason for some people, to disseminate false
6 information about elections. And that's certainly relevant to
7 the public interest.

8 Another thing that the Commission considered here is
9 that it would draw the Commission into investigating these
10 kinds of activities, and that's not farfetched.

11 THE COURT: Is that something that the Commission is
12 tasked with doing now? I'm assuming there are other
13 contract -- I probably could come up with an example of any
14 contract that could be subject to some manipulation where
15 there's money involved. Is that the kind of thing that the
16 Commission would typically investigate if there was an issue
17 with -- okay.

18 MS. STUKES: Absolutely, Your Honor. As a federal
19 regulator of commodities markets, the CFTC, as I said, is in
20 charge of ensuring price integrity on our federally-regulated
21 exchanges. In the ordinary course, there's many ways to
22 manipulate markets.

23 Now, I say this in the same breath that I say I think
24 the markets regulated by the CFTC are among the safest in the
25 rule, but the limit of manipulation is really just the limit of

1 human ingenuity. Manipulation is attempted, and the CFTC, as a
2 law enforcement agency, routinely investigates allegations of
3 fraud and manipulation in the markets that it oversees.

4 THE COURT: I asked that because when I read your
5 brief it sounded like one of the arguments you were making was
6 that if you had to do that in this circumstance it would put
7 you in a position that the CFTC is not equipped to do. But it
8 sound like, if it's part of your regular mission, it wouldn't
9 put you in a position that you're not already required or
10 routinely do.

11 MS. STUKES: My answer to that, Your Honor, is that
12 there are two important differences because this is not a
13 minimal concern. It's not simple enough to say, oh, but you
14 investigate manipulation in markets that you're not an expert
15 in all the time. And it's true, we have a division of
16 enforcement that investigates alleged manipulation in a lot of
17 markets on a lot of commodities.

18 The difference here, there are two important
19 differences. First and most important, any government
20 investigation and enforcement activity involving the political
21 process is inherently sensitive. There's a difference in the
22 CFTC investigating economic activity related to commodity
23 derivatives markets and the CFTC investigating acts that may be
24 political speech or other conduct central to the political
25 process.

1 Second, as we briefed and as the Commission found in
2 its order, most of the markets regulated by the CFTC have
3 objective economic data that may not totally decide a case but
4 at a minimum it provides some objective grounding through the
5 CFTC's investigations of whether manipulation has occurred.

6 The vast potential of these contracts to incentivize
7 misinformation could absolutely draw the Commission into
8 investigations of a vast array of possible manipulation. The
9 pricing of these congressional control contracts would be
10 impacted by such a broad array of information. Anything that
11 could influence the election could influence the price of these
12 contracts. So polls, rumors, news, announcements, faked
13 information, advertisement, I can't even think of it all. And
14 this would be for every congressional race in the country.

15 Kalshi doesn't have jurisdiction to investigate any
16 alleged manipulation on these contracts. It would fall to the
17 CFTC. In its everyday operation, the CFTC receives tips of
18 possible market manipulation and it would be drawn into
19 investigating whether information disseminated about
20 congressional elections illegally manipulated the market in
21 these contracts, and that is not a role for which the
22 Commission is equipped and it would greatly expand the
23 jurisdiction of the CFTC.

24 Assuming the role of an election cop raises very
25 serious concerns about not only the misalignment of that role

1 with the Commission's mission and its history but with election
2 integrity. And it was reasonable for the CFTC to have
3 considered this.

4 As another example, it's not farfetched. It's not a
5 de minimus concern. Kalshi says, oh, it's not a big deal. You
6 do that anyway. Or it's not likely to happen.

7 The Commission's predicted judgment based upon its
8 existence as a law enforcement agency that routinely
9 investigates manipulation and as a regulatory agency that is
10 entrusted with ensuring the integrity of its markets, it was a
11 reasonable predictive judgment to say that that would draw the
12 CFTC into investigating conduct that relates to elections.

13 There's another example. There's another example I
14 wanted to talk with Your Honor about, and that would be you
15 asked Kalshi's counsel about the limits that it proposed to put
16 on who could trade these contracts. As far as I read that
17 list, it wouldn't prohibit people who count the votes from
18 trading in these contracts.

19 So imagine a scenario -- and the position limits,
20 meaning how much can be traded on these contracts, the position
21 limits proposed would allow trading of up to \$5 million if
22 you're a company or entity. So imagine a group of poll
23 workers -- and I don't mean people that are involved in
24 surveys. I mean people that count the votes. They form a
25 company of some kind and they're accused of putting their money

1 together and putting a \$5 million position on these
2 congressional-control contracts. These are the people counting
3 the votes.

4 Someone refers this to the CFTC because they think the
5 vote counting has been manipulated to make a profit in the
6 event contract. So here would be the CFTC being drawn into
7 whether the vote count is accurate.

8 THE COURT: Or whether there was fraud in connection
9 with the event contract, right?

10 MS. STUKES: Correct. Because it would ask the
11 question of whether there was fraud in the event contract.
12 Because that would be manipulating -- manipulative or
13 fraudulent conduct that unduly influenced the event contract.

14 And that's an example of the CFTC's concern. Because
15 these contracts could -- their very existence could incentivize
16 conduct designed to artificially affect the electoral process
17 for the purpose of manipulating the price of the contract for
18 financial gain or they could incentivize the manipulation of
19 the market for the purpose of artificially affecting the
20 election or perceptions of the election.

21 I want to mention one thing that Kalshi talks about
22 and that is -- oh, actually, before I get there, research in
23 the record -- one comment submitted in the record involved the
24 actual manipulation of a political event contract by false
25 information. There was -- it's a bizarre fact pattern. The

1 pop singer Kid Rock was shown to be ahead in the polls in a
2 match-up against a sitting senator before he had ever -- he had
3 not even declared a candidacy for the Senate, but he was shown
4 in a poll to be ahead of a sitting senator, and that caused the
5 price of a corresponding event contract to drop and it caused
6 trading volume to surge, and users were later, on social media,
7 bragging about how that poll trolled the news media and
8 influenced the election event contract.

9 Researchers have theorized that that kind of fake
10 information could be used to generate market movement in other
11 election event contracts. So it's not farfetched to say that
12 this is a serious concern. Over 600 comment letters were
13 received by the agency, including from Senators and members of
14 the House of Representatives, expressing significant concerns
15 about election integrity and the improper commodification of
16 our elections.

17 And I don't say commodification just as rhetorical
18 flourish. When you have an event contract trading on a
19 CFTC-regulated market and the underlying event of that contract
20 is an election, the election is a commodity under the Commodity
21 Exchange Act.

22 Where a large number of states have specifically
23 disallowed gambling on elections by either statute or common
24 law, and that reflects the view of a large number of states
25 that this kind of wagering is against the public interest, the

1 Commission grants significant weight to any threat to election
2 integrity, as well as the threat to the perception of election
3 integrity.

4 And this is especially important at a point in time
5 where so many people question the validity of elections. The
6 Commission is not required to let threats to election integrity
7 happen before recognizing election integrity as a public
8 interest concern with respect to these contracts.

9 There's one other value that Kalshi argues -- that
10 Kalshi and Amici and commenters argue that these contracts
11 have, and that is that they could provide beneficial
12 market-based predictive data. And that that's societally
13 valuable information. The Commission considered that but it
14 didn't find that generation of such data outweighed the very
15 real and grave concerns about the threat to election integrity
16 that these contracts would pose.

17 The CFTC's predictive judgment about possible negative
18 consequences that could arise from these proposed contracts are
19 entitled to deference under APA law. The Commission didn't
20 ignore evidence. It didn't refuse to engage with contrary
21 positions. It found that any economic utility of the contracts
22 didn't outweigh the very serious risks that the contracts could
23 be manipulated and could incentivize the spread of
24 misinformation or be used to undermine election integrity or
25 the perception of election integrity.

1 So for all of these reasons, the CFTC submits that
2 Your Honor should deny Kalshi's motion for summary judgment and
3 grant judgment to the CFTC.

4 THE COURT: Okay. Thank you.

5 Any brief rebuttal?

6 MR. ROTH: Very brief. Very, very brief.

7 THE COURT: Yes.

8 MR. ROTH: I appreciate the Court's time. I will be
9 very, very brief. Three quick points. First Your Honor asked
10 about the catchall category, why they didn't rely on the
11 catchall.

12 THE COURT: Yes.

13 MR. ROTH: The catchall requires a rule making. It's
14 by rule or regulation. They haven't done a rule making. And
15 so that's -- they couldn't rely on the catchall.

16 THE COURT: They could not rely on the catchall.

17 MR. ROTH: Yes. So they would first have to do a rule
18 making to determine some activity is similar to the others.
19 They have not done that. So that's the answer to that.

20 THE COURT: Thank you. I appreciate that.

21 MR. ROTH: On unlawful, I still did not really hear a
22 theory as to why their reading doesn't sweep in everything.
23 What I heard was, you don't have to worry about that because
24 that's not this case. That's not how statutory interpretation
25 works. We need to understand what the statute means. Counsel

1 admitted that's a de novo question for this Court to consider.
2 And, of course, in considering what the statute means, the
3 Court is going to look at how it would apply in other contexts.

4 That doesn't mean you need to figure out the answer to
5 every other hypothetical case that might exist. But the
6 Supreme Court, whenever it's considering a question of
7 statutory interpretation, looks at how it's going to apply
8 elsewhere, and if it's going to be absurd in a wide variety of
9 other cases that means it's a bad interpretation. That, I
10 think, covers unlawful.

11 The only thing I'll say about gaming, to add to
12 earlier, Your Honor asked if their interpretation of contests
13 would sweep in anything that isn't a game other than elections.
14 And counsel's response was potentially awards shows, like who's
15 going to win the Emmy or the Oscar, which I thought was a
16 fascinating example because Kalshi offers those and has offered
17 those for a long time, and they have never subjected those to
18 the review process.

19 And I think that really underscores the sort of
20 outcome-driven aspect of this. It's not a good-faith statutory
21 interpretation. It's an attempt to get it in without a real
22 coherent theory of what the statute means.

23 That's all I have, Your Honor, unless you have further
24 questions.

25 THE COURT: No. Thank you. I appreciate the briefs

1 were very good and helpful and I appreciate your time.

2 Before we leave, I'm going to embarrass Ms. Franklin
3 because -- this is my courtroom deputy, Ms. Franklin, and this
4 is her last in-person hearing. She's going to be retiring
5 after over 30 years on the court.

6 (Applause)

7 So I did not know there were going to be this many
8 people here. I brought cupcakes for the parties and for us. I
9 am sorry to the people in the audience. I do not know if I can
10 accommodate everyone. There's more coming.

11 I'm sad but happy for Ms. Franklin. After 32 years on
12 the court, she certainly deserves to retire but we're going to
13 miss her. And so I just wanted to recognize her for this last
14 hearing of hers in this courtroom. So thanks everyone.

15 (Applause)

16 We're waiting for more cake.

17 There's not a song that we can sing. I don't know if
18 people blow out candles for retirement. We just wanted to say
19 thank you so much. We're going to miss you. Please don't
20 leave us too in the wind, and I hope you come back.

21 (Off-the-record discussion.)

22 THE COURT: I'll take this matter under advisement.
23 Thank you, everyone.

24 (Proceedings concluded at 3:03 PM)

25

C E R T I F I C A T E

I, Stacy Johns, certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

/s/ Stacy Johns

Date: June 3, 2024

Stacy Johns, RPR
Official Court Reporter

MR. ROTH: [37] 2/2
2/19 3/6 4/19 5/2 5/8
5/21 6/2 6/4 6/7 6/11
6/21 7/17 9/23 10/7
12/23 13/2 13/6 13/11
13/18 13/24 16/10
20/24 21/2 21/20 22/3
22/6 22/10 22/13 33/9
33/13 34/1 75/6 75/8
75/13 75/17 75/21

MS. RICE: [14] 22/14
23/13 23/16 27/10 29/9
32/20 33/19 34/3 34/16
35/8 35/21 36/12 36/21
37/12

MS. STUKES: [52] 2/7
37/22 38/6 38/10 38/16
38/21 40/9 40/12 40/17
40/21 43/3 44/25 45/9
46/4 46/17 47/1 47/4
47/21 49/3 49/23 50/1
50/8 52/20 52/24 53/23
54/20 55/1 55/17 55/21
56/3 56/16 56/19 56/22
57/22 58/8 59/1 59/6
59/14 59/21 59/24
60/10 60/16 63/7 65/9
65/15 65/21 66/10
66/17 67/2 68/18 69/11
72/10

THE COURT: [101]

\$

\$5 [2] 71/21 72/1
\$5 million [2] 71/21
72/1

-

-- to [1] 60/10

/

/s [1] 78/8

1

100 [1] 34/5
100 percent [1] 36/1
11 [1] 12/1
1155 [1] 1/21
1397 [1] 28/10
1427 [1] 30/2
1436 [1] 30/2
1533 [1] 24/15
1597 [1] 24/14
1:00 [1] 1/5
1:23-cv-03257-JMC [1]
1/4

2

2000 [3] 11/19 11/22
62/3
20001 [1] 1/16
2010 [1] 11/22
2024 [4] 1/5 7/21 12/19
78/8
20581 [1] 1/21
21st [1] 1/21
29 [1] 11/7

3

30 [1] 1/5
30 years [1] 77/5
32 years [1] 77/11
3:03 [1] 77/24

4

40 [2] 25/13 28/8
41 [1] 25/13
42 [1] 25/5
44 [1] 25/5
46 [1] 28/8

5

51 [1] 1/15
53 [1] 27/19
55 [1] 27/19
5CC5C [5] 38/23 38/23
39/3 54/17 61/25

6

600 [1] 73/12
68 [1] 25/14

7

70 [1] 25/14
78-2 [1] 38/24

8

80 [1] 34/5
88 [1] 34/5

9

99 [1] 34/5

A

ability [1] 33/6
able [5] 5/19 15/1
26/14 27/1 45/4
about [96]
above [2] 8/10 78/5
above-entitled [1] 78/5
absolutely [5] 29/9
38/10 55/17 68/18 70/7
absurd [2] 46/20 76/8
abundance [2] 40/10
40/18
Academy [2] 55/22
56/15
accept [2] 59/5 59/7
accepted [2] 20/13
37/16
accident [1] 15/6
accommodate [1]
77/10
according [1] 4/21
account [1] 26/1
accurate [2] 72/7 78/4
accused [1] 71/25
acknowledges [2]
22/24 35/22
acquire [1] 12/19
act [12] 3/11 3/13 7/19
10/5 10/12 12/22 14/20
40/24 45/1 48/17 55/11
73/21
acted [1] 41/1
action [3] 1/3 3/10 17/4

actions [2] 23/1 23/4
activist [1] 67/16
activities [13] 3/17
11/13 11/14 39/11 44/4
44/13 44/17 45/12
45/15 46/11 46/12
60/17 68/10
activity [37] 7/13 7/17
8/20 9/9 9/14 9/15
10/13 11/11 12/7 12/9
13/12 14/4 31/22 32/25
39/14 39/16 39/16
42/12 42/14 42/19
42/25 43/8 44/2 44/10
44/14 44/20 44/23 46/1
47/6 48/20 48/23 49/7
51/21 51/22 69/20
69/22 75/18
acts [2] 7/24 69/23
actual [5] 35/5 44/16
61/22 64/10 72/24
actually [19] 2/19
10/24 11/20 11/25
12/17 13/25 17/20
27/18 33/10 35/24 36/1
45/9 46/19 50/8 54/13
54/22 55/21 63/25
72/22
add [3] 7/4 32/3 76/11
added [1] 68/4
adding [1] 58/23
addition [1] 34/12
address [3] 21/24 40/2
64/14
addressed [1] 39/9
adjudication [6] 37/13
37/19 39/21 39/23
40/22 52/12
Administrative [1]
40/24
admits [2] 8/25 12/1
admitted [1] 76/1
adopted [1] 17/11
advance [1] 26/15
advertisement [1]
70/13
advisement [1] 77/22
Advisors [1] 23/23
advocate [1] 52/5
advocated [1] 41/10
advocating [2] 36/24
44/22
affect [3] 27/17 41/19
72/16
affected [2] 35/18
63/13
affecting [1] 72/19
affects [3] 28/3 28/4
29/22
afoul [2] 40/23 50/22
after [3] 15/2 77/5
77/11
aftermath [1] 65/7
afternoon [5] 2/2 2/6
2/7 2/11 37/22
again [8] 14/5 15/16
18/20 21/14 28/11
53/23 54/1 64/21

against [6] 25/3 29/7
49/15 61/14 73/2 73/25
agencies [1] 23/3
agency [17] 3/10 23/1
23/3 25/16 31/15 31/21
31/25 34/17 37/25 41/1
41/4 67/9 67/10 69/2
71/8 71/9 73/13
Agency's [1] 22/20
agree [12] 5/2 6/15
12/24 20/20 36/12
37/12 50/8 50/9 52/19
52/20 52/21 52/22
agreement [5] 9/23
10/6 43/13 44/9 44/14
agreements [2] 9/20
44/1
agricultural [1] 61/20
ahead [4] 56/3 67/7
73/1 73/4
aided [1] 1/25
airline [1] 61/4
AISENBREY [2] 1/19
2/9
align [1] 9/11
aligns [2] 8/3 14/22
all [35] 3/3 6/20 8/17
12/8 13/21 15/5 18/20
22/25 23/16 24/24
28/16 30/10 31/5 31/16
31/18 31/20 34/3 34/9
34/10 35/19 35/21 36/4
37/21 43/12 43/23 44/7
48/19 50/4 52/16 56/3
63/16 69/15 70/13 75/1
76/23
allegations [1] 69/2
alleged [4] 23/9 64/6
69/16 70/16
allocated [1] 45/6
allow [7] 2/24 11/15
26/9 49/21 51/14 51/18
71/21
allowed [7] 5/9 5/11
5/11 7/4 34/9 49/21
50/17
allowing [1] 50/13
alone [1] 8/24
already [9] 25/2 25/4
25/9 25/24 30/25 31/5
65/10 66/21 69/9
also [13] 8/11 17/2
19/4 27/14 27/15 27/17
28/1 29/20 49/15 54/23
55/10 62/10 67/10
alternative [1] 21/11
although [2] 2/13 4/10
Altman [1] 24/19
Altruism [1] 30/1
always [2] 26/7 27/6
am [3] 52/24 58/8 77/9
AMANDA [4] 1/13 2/4
6/23 22/15
ambiguities [1] 58/19
ambiguous [1] 58/18
amended [1] 48/13
Amici [1] 74/10
among [1] 68/24

amount [1] 35/23
amounts [1] 9/4
amusement [3] 15/9
15/20 27/16
analysis [11] 4/4 9/16
21/21 22/16 22/21 23/8
29/14 30/20 32/22
32/23 34/19
analyzed [1] 46/5
Ann [1] 37/23
ANNE [2] 1/18 2/8
announcements [1]
70/12
another [15] 4/24 10/5
30/18 34/25 46/20 48/3
48/3 58/4 58/24 60/1
62/23 68/8 71/4 71/13
71/13
answer [7] 6/2 32/24
35/1 40/14 69/11 75/19
76/4
answers [1] 28/19
anti [1] 33/14
anti-manipulation [1]
33/14
antifraud [2] 33/14
67/11
any [52] 3/24 4/24 5/1
10/3 11/4 12/2 15/15
17/12 19/5 19/15 20/2
20/9 20/21 21/22 28/5
31/21 32/1 32/2 34/11
34/11 34/14 35/4 37/5
38/6 38/19 39/2 40/2
40/4 44/8 45/22 45/22
46/22 47/12 48/9 51/13
52/9 52/16 53/1 53/14
56/14 59/8 59/21 59/22
60/14 62/25 65/3 68/13
69/19 70/15 74/1 74/21
75/5
anyone [1] 19/10
anything [10] 11/24
26/9 28/12 32/3 34/21
36/8 43/7 46/7 70/10
76/13
anyway [1] 71/6
anywhere [1] 66/13
APA [4] 3/11 4/14 4/14
74/19
apologies [1] 12/14
appear [1] 7/15
APPEARANCES [1]
1/10
appears [1] 9/24
appellate [1] 2/24
Applause [2] 77/6
77/15
applicable [2] 37/11
58/16
applied [3] 36/11 38/18
53/24
applies [7] 22/25 34/14
41/13 41/23 42/2 43/19
58/25
apply [7] 8/25 23/4
39/11 40/4 56/11 76/3
76/7

A
applying [1] 48/2
appreciate [4] 75/8
 75/20 76/25 77/1
approach [1] 17/24
appropriate [1] 10/14
approvals [1] 24/23
approved [1] 31/14
arbitrary [15] 4/4 6/24
 19/25 21/24 22/21
 22/25 23/4 34/24 37/14
 39/7 50/21 64/15 64/19
 65/17 65/19
are [95]
aren't [2] 4/16 34/9
argue [6] 4/2 7/7 9/21
 14/5 26/22 74/10
argues [3] 50/21 64/14
 74/9
arguing [2] 2/16 9/3
argument [22] 2/13
 2/14 2/20 4/8 4/20 6/19
 6/23 18/5 20/22 22/19
 26/12 27/11 37/18
 38/12 41/13 45/20
 46/18 47/25 58/22 65/2
 66/19 66/20
arguments [5] 23/7
 25/19 30/3 52/6 69/5
arise [1] 74/18
around [1] 13/9
arraignment [1] 10/3
array [2] 70/8 70/10
art [1] 7/22
articles [3] 22/4 22/7
 51/8
articulation [1] 46/8
artificially [2] 72/16
 72/19
as [90]
aside [1] 65/3
ask [7] 4/7 5/5 9/18
 33/10 38/8 55/16 72/10
asked [9] 2/21 32/4
 39/21 62/5 62/11 69/4
 71/15 75/9 76/12
asking [7] 28/15 30/21
 30/22 50/12 51/6 58/17
 66/18
asks [2] 43/17 51/5
aspect [6] 10/25 30/2
 31/23 44/8 63/22 76/20
aspects [1] 64/13
assassination [3] 7/8
 8/3 8/5
associated [1] 40/19
assume [1] 32/22
assuming [4] 4/3 4/17
 68/12 70/24
Atlantic [1] 51/17
attack [1] 8/13
attempt [4] 18/7 18/8
 20/18 76/21
attempted [1] 69/1
attenuated [1] 18/17
audience [1] 77/9
authority [2] 51/24
 67/11

authorizes [1] 3/14
availability [1] 68/4
Avenue [1] 1/15
award [3] 55/22 56/15
 56/15
awards [3] 55/22 56/1
 76/14
aware [1] 38/21
B
back [11] 14/17 14/19
 18/5 22/23 28/14 31/6
 37/13 42/23 49/15
 54/20 77/20
background [1] 34/6
bad [6] 8/6 8/6 8/7 8/8
 8/11 76/9
balance [1] 36/2
ban [2] 12/9 51/4
BARRY [1] 1/18
base [3] 45/9 52/25
 53/4
based [19] 13/4 13/6
 25/9 43/14 43/15 43/15
 43/17 43/18 43/21 44/5
 44/15 44/19 53/2 56/14
 57/20 58/6 61/19 71/7
 74/12
basic [2] 3/23 30/5
basing [1] 62/6
basis [5] 14/14 47/13
 53/7 62/7 63/19
bat [1] 7/2
be [110]
beast [1] 19/7
beasts [1] 19/9
became [1] 17/21
because [81]
become [2] 27/6 31/18
been [9] 2/18 6/12
 12/23 12/24 18/11 21/5
 37/18 62/6 72/5
before [19] 1/9 5/16
 6/21 15/25 28/11 38/16
 39/19 40/5 40/23 41/17
 47/4 53/11 59/6 62/2
 66/4 72/22 73/2 74/7
 77/2
beginning [2] 30/17
 31/11
behalf [2] 2/3 37/23
behind [3] 21/13 66/7
 66/22
being [5] 5/23 12/17
 27/8 66/23 72/6
believe [1] 49/3
beneficial [1] 74/11
benefits [10] 14/16
 23/9 23/11 23/16 25/7
 25/8 25/15 36/15 37/8
 65/10
BERI [2] 1/19 2/9
Besides [1] 55/18
best [1] 45/20
bet [5] 49/6 51/16
 55/11 66/2 66/4
bets [1] 49/18
better [5] 16/10 33/11

40/14 41/12 46/8
betting [24] 8/23 9/4
 11/4 12/8 12/9 15/10
 15/21 17/9 17/25 19/5
 29/1 45/22 46/13 46/16
 48/8 50/19 51/9 51/12
 51/14 55/8 55/12 59/12
 59/19 60/4
between [11] 5/15 13/3
 14/24 16/1 36/10 43/4
 44/12 45/10 54/14
 62/10 64/10
beyond [3] 5/10 35/17
 56/12
big [3] 67/16 68/5 71/5
biotech [1] 24/20
bit [3] 31/12 37/16
 37/18
bizarre [1] 72/25
blank [1] 46/16
block [1] 3/14
blocked [1] 3/8
blow [1] 77/18
board [1] 19/21
body [1] 45/4
both [8] 23/8 26/4
 27/11 37/15 45/2 62/15
 63/8 63/8
bottom [1] 12/10
bounds [1] 40/3
Bowl [2] 14/12 14/12
bragging [1] 73/7
break [2] 38/4 44/20
breath [1] 68/23
brief [18] 4/13 12/1
 18/3 22/22 22/24 25/13
 25/23 35/2 42/23 42/24
 54/23 57/11 61/4 69/5
 75/5 75/6 75/6 75/9
briefed [3] 39/10 41/17
 70/1
briefing [3] 11/3 14/24
 17/21
briefly [1] 22/15
briefs [6] 6/12 17/2
 37/24 60/24 65/2 76/25
bring [1] 38/18
brings [1] 59/14
broad [10] 7/9 7/9
 21/14 42/8 42/11 46/9
 46/9 46/11 50/2 70/10
broader [15] 12/21
 13/8 13/9 16/12 16/18
 17/8 17/9 17/11 17/20
 17/22 43/8 44/3 44/8
 44/22 53/5
BROOKS [1] 1/14
brought [1] 77/8
bug [1] 26/8
built [1] 27/16
business [5] 19/15
 22/9 23/25 24/2 61/5
businesses [3] 24/1
 24/14 24/17
buy [2] 36/2 61/4
buying [2] 9/3 29/16

C
C-SPAN [1] 15/1
cabinet [1] 20/8
cake [1] 77/16
California [1] 27/23
call [3] 15/23 33/15
 38/23
came [3] 31/11 49/14
 60/1
campaign [1] 30/10
can [51] 2/25 4/7 5/5
 7/1 7/6 7/10 8/11 9/18
 12/14 12/19 13/13 15/3
 16/12 19/19 19/20 24/3
 26/4 26/11 26/17 28/21
 29/4 40/17 42/20 44/16
 44/16 44/16 46/5 47/10
 47/14 51/4 51/25 53/8
 53/20 55/16 57/1 57/1
 57/2 59/5 59/7 60/14
 61/12 61/21 61/21 62/5
 63/4 64/1 65/7 66/14
 71/20 77/9 77/17
can't [11] 9/1 11/12
 12/2 17/15 26/7 43/8
 50/22 51/16 58/3 66/14
 70/13
candid [1] 12/5
candidacy [1] 73/3
candidate [2] 5/25
 67/18
candidates [4] 5/15
 19/8 66/2 66/8
candles [1] 77/18
cannot [1] 32/8
capricious [13] 4/5
 6/24 21/24 22/21 22/25
 23/4 34/24 37/14 39/8
 50/22 64/15 65/17
 65/19
capture [4] 5/4 13/15
 26/9 50/4
capturing [1] 10/2
care [1] 21/20
carve [1] 20/4
case [23] 2/14 2/17 3/7
 3/19 15/25 35/16 35/19
 38/16 38/22 41/8 41/9
 41/25 48/6 48/19 50/10
 52/12 54/22 56/12
 56/13 58/4 70/3 75/24
 76/5
cases [4] 37/13 37/14
 37/15 76/9
cash [1] 61/22
catchall [9] 4/10 7/3
 38/11 38/13 75/10
 75/11 75/13 75/15
 75/16
categories [17] 3/17
 3/25 4/3 4/11 4/21 5/3
 7/1 7/4 7/12 11/23
 34/13 38/18 38/19 42/6
 50/2 50/3 52/18
categorization [1]
 21/10
category [16] 6/4 6/14
 6/15 6/16 10/25 15/13

20/3 20/10 21/4 38/11
 48/7 49/16 53/18 54/1
 59/15 75/10
caused [2] 73/4 73/5
caution [2] 40/10 40/18
CEA [10] 38/22 38/24
 39/3 51/1 54/16 60/25
 61/17 62/2 67/10 67/11
CEA's [1] 51/24
Center [1] 29/25
central [1] 69/24
CEO [1] 24/19
certain [9] 5/9 7/21
 12/19 19/17 20/1 21/3
 37/1 66/8 66/22
certainly [5] 26/13 36/6
 56/11 68/6 77/12
certify [1] 78/3
CFTC [37] 4/22 5/1
 17/19 21/9 31/17 34/7
 37/25 41/2 50/24 51/5
 51/7 51/12 51/18 51/23
 61/13 61/19 62/3 62/8
 62/10 67/25 68/19
 68/24 69/1 69/7 69/22
 69/23 70/2 70/17 70/17
 70/23 71/2 71/12 72/4
 72/6 73/19 75/1 75/3
CFTC's [5] 38/21 52/1
 70/5 72/14 74/17
CFTC-regulated [5]
 21/9 51/5 61/13 61/19
 73/19
chairman [1] 23/22
challenge [1] 3/22
chamber [10] 5/18
 26/23 27/2 62/23 63/12
 63/14 64/8 64/17 65/5
 66/25
chance [2] 16/23 17/3
change [4] 28/3 31/5
 57/20 58/1
changes [1] 63/13
characterize [1] 51/8
characterized [1] 60/4
charge [1] 68/20
chart [1] 27/18
circle [1] 28/14
circles [1] 31/6
circulating [1] 67/22
circumstance [4]
 12/15 40/7 58/24 69/6
circumventing [1]
 13/14
cite [3] 45/2 54/23
 57/11
cited [2] 17/2 62/15
cites [1] 51/8
City [1] 51/17
Civil [1] 1/3
clarification [2] 23/12
 63/4
clarified [1] 33/13
clear [9] 10/10 17/22
 18/25 28/18 31/9 35/12
 36/23 36/25 50/16
clearly [1] 42/24
clever [1] 18/6

<p>C</p> <p>client [5] 4/14 4/17 4/24 22/8 32/5</p> <p>client's [1] 22/1</p> <p>clients [1] 24/8</p> <p>climate [1] 24/2</p> <p>close [1] 16/12</p> <p>closely [5] 16/15 28/23 41/20 42/13 42/17</p> <p>coal [1] 24/11</p> <p>COBB [1] 1/9</p> <p>codification [1] 39/1</p> <p>codified [1] 38/24</p> <p>codifies [2] 60/25 62/2</p> <p>coherent [1] 76/22</p> <p>colleague [6] 6/23 20/12 21/23 22/16 32/4 33/10</p> <p>colleagues [2] 10/21 40/13</p> <p>collect [1] 66/9</p> <p>collected [1] 11/6</p> <p>collection [1] 22/6</p> <p>colloquially [1] 17/8</p> <p>colloquy [7] 14/23 15/3 18/20 21/6 54/14 62/10 63/25</p> <p>color [1] 20/8</p> <p>COLUMBIA [1] 1/1</p> <p>combination [1] 37/3</p> <p>come [5] 5/7 33/16 54/20 68/13 77/20</p> <p>comes [2] 35/9 45/16</p> <p>coming [3] 24/6 53/11 77/10</p> <p>comment [5] 29/25 40/7 54/16 72/23 73/12</p> <p>commenters [3] 62/20 63/16 74/10</p> <p>comments [5] 37/16 62/18 62/20 63/9 63/10</p> <p>commercial [2] 63/2 63/6</p> <p>COMMISSION [104]</p> <p>Commission's [22] 4/4 8/21 10/25 22/16 29/6 35/2 35/22 39/7 39/9 39/20 41/18 47/13 48/1 50/16 52/7 53/8 56/23 58/9 59/10 65/22 71/1 71/7</p> <p>Commissions [1] 36/15</p> <p>commodification [2] 73/15 73/17</p> <p>commodities [9] 51/2 51/3 52/1 52/2 61/1 61/3 61/20 68/19 69/17</p> <p>commodity [20] 1/6 1/20 2/8 3/11 3/13 35/18 37/23 43/14 61/2 61/9 61/10 61/11 61/14 61/17 61/18 61/22 63/1 69/22 73/20 73/20</p> <p>common [7] 8/5 24/16 50/20 55/3 55/5 55/12 73/23</p> <p>commonsensical [1]</p>	<p>23/19</p> <p>companies [1] 24/21</p> <p>company [3] 24/14 71/22 71/25</p> <p>complies [1] 3/10</p> <p>comply [2] 33/15 33/24</p> <p>components [1] 3/23</p> <p>computer [1] 1/25</p> <p>computer-aided [1] 1/25</p> <p>concept [2] 17/18 52/7</p> <p>conceptually [1] 24/2</p> <p>concern [11] 29/5 31/24 31/24 46/17 51/15 66/19 69/13 71/5 72/14 73/12 74/8</p> <p>concerned [2] 8/7 67/7</p> <p>concerns [7] 29/8 65/17 65/21 65/24 70/25 73/14 74/15</p> <p>Concise [1] 17/1</p> <p>conclude [2] 39/7 53/25</p> <p>concluded [5] 50/10 50/10 51/20 54/6 77/24</p> <p>conditions [1] 32/12</p> <p>conduct [5] 67/14 69/24 71/12 72/13 72/16</p> <p>conducted [1] 19/6</p> <p>conducting [1] 19/15</p> <p>Congress [29] 8/7 11/22 15/12 18/10 20/4 20/18 20/25 21/4 21/11 23/18 24/18 24/25 26/23 27/2 27/5 28/1 28/3 28/12 30/18 31/1 31/3 32/18 50/4 62/23 63/12 63/15 64/8 64/18 66/25</p> <p>congressional [18] 4/16 15/4 23/24 32/7 39/3 42/10 50/18 54/8 54/14 57/19 62/19 64/1 67/23 68/2 70/9 70/14 70/20 72/2</p> <p>congressional-control [1] 72/2</p> <p>connection [2] 14/19 72/8</p> <p>CONOR [2] 1/18 2/10</p> <p>consequence [3] 41/21 42/14 64/3</p> <p>consequences [4] 24/1 31/7 65/6 74/18</p> <p>consider [6] 8/20 36/13 51/25 53/3 62/1 76/1</p> <p>considerations [1] 23/5</p> <p>considered [14] 15/25 37/17 41/2 51/21 60/21 61/23 61/24 62/18 62/20 64/6 64/13 68/8 71/3 74/13</p> <p>considering [8] 33/7 38/16 51/20 62/8 62/16 63/8 76/2 76/6</p> <p>considers [2] 40/22</p>	<p>51/25</p> <p>consistent [2] 14/21 34/3</p> <p>contest [33] 18/1 18/1 18/16 18/23 19/10 19/16 19/17 19/20 19/21 19/22 55/4 55/7 55/13 55/14 55/19 55/24 56/8 56/15 56/17 56/25 57/8 57/9 57/10 57/12 57/13 57/16 58/4 58/23 59/2 59/11 59/12 60/7 60/8</p> <p>contests [4] 19/1 19/6 55/22 76/12</p> <p>context [16] 8/2 9/6 12/12 14/6 17/23 19/10 19/11 19/22 20/19 26/22 31/21 32/2 35/14 36/7 46/20 60/1</p> <p>contexts [1] 76/3</p> <p>contingency [4] 11/9 16/23 17/13 43/16</p> <p>contingent [18] 11/4 12/9 45/22 46/22 47/12 48/9 49/10 49/11 49/18 49/19 49/20 52/9 52/16 53/1 53/14 59/20 59/21 59/22</p> <p>Continue [1] 6/20</p> <p>contract [114]</p> <p>contract's [1] 60/21</p> <p>contracting [1] 10/12</p> <p>contracts [131]</p> <p>contrary [6] 3/18 39/5 39/17 60/19 65/23 74/20</p> <p>contrivance [1] 19/16</p> <p>control [30] 3/9 5/14 5/24 23/18 23/24 24/17 24/17 26/23 27/5 28/3 28/12 30/18 31/1 31/3 32/14 32/18 39/3 50/18 62/19 63/12 63/14 64/8 65/4 66/24 66/25 67/18 67/23 68/2 70/9 72/2</p> <p>controls [2] 5/18 27/1</p> <p>convenient [1] 20/16</p> <p>conversation [1] 10/20</p> <p>cop [1] 70/24</p> <p>core [3] 14/7 33/15 34/6</p> <p>corporate [1] 19/21</p> <p>correct [3] 4/19 32/19 72/10</p> <p>correlated [1] 62/25</p> <p>corresponding [1] 73/5</p> <p>could [47] 4/23 4/24 6/7 6/17 10/19 10/21 10/21 18/16 19/21 20/6 21/5 21/17 29/16 30/25 31/5 32/15 38/8 43/2 45/1 46/16 51/12 51/13 58/15 63/13 64/2 64/8 65/25 66/11 66/15 66/24 67/4 67/13 68/13 68/14 70/7 70/11 70/11</p>	<p>71/16 72/15 72/15 72/18 73/10 74/11 74/18 74/22 74/23 75/16</p> <p>couldn't [3] 10/11 63/1 75/15</p> <p>Council [1] 23/23</p> <p>counsel [5] 1/20 2/3 2/9 71/15 75/25</p> <p>counsel's [1] 76/14</p> <p>count [3] 71/17 71/24 72/7</p> <p>counting [2] 72/2 72/5</p> <p>country [2] 45/6 70/14</p> <p>couple [6] 6/17 9/10 18/25 23/20 67/19 68/3</p> <p>course [6] 8/18 11/9 15/19 28/6 68/21 76/2</p> <p>court [17] 1/1 1/23 1/24 3/10 23/12 38/4 38/21 39/6 41/17 51/6 54/22 76/1 76/3 76/6 77/5 77/12 78/9</p> <p>Court's [2] 41/14 75/8</p> <p>courtroom [3] 19/12 77/3 77/14</p> <p>cover [5] 12/2 42/8 42/11 46/9 46/11</p> <p>covered [1] 17/14</p> <p>covers [2] 11/24 76/10</p> <p>create [1] 65/25</p> <p>credible [1] 18/18</p> <p>crime [3] 8/16 8/17 48/21</p> <p>criminal [1] 48/22</p> <p>criticisms [1] 56/22</p> <p>cross [4] 2/12 7/6 16/5 18/15</p> <p>cupcakes [1] 77/8</p> <p>curiosity [1] 40/16</p> <p>curious [3] 38/8 38/13 38/14</p> <p>cut [1] 33/9</p> <p>cuts [1] 35/12</p> <p>cv [1] 1/4</p> <p>D</p> <p>D.C [5] 1/7 1/16 1/21 7/20 8/9</p> <p>DALY [2] 1/18 2/10</p> <p>damage [3] 26/13 26/17 27/14</p> <p>damaging [1] 67/18</p> <p>darn [1] 30/16</p> <p>data [4] 25/9 70/3 74/12 74/14</p> <p>Date [1] 78/8</p> <p>Day [2] 1/15 2/3</p> <p>daylight [1] 36/10</p> <p>days [1] 35/17</p> <p>DCM [5] 4/24 5/19 32/15 48/14 49/13</p> <p>de [3] 41/15 71/5 76/1</p> <p>deal [2] 58/18 71/5</p> <p>debated [1] 6/12</p> <p>decide [3] 53/10 57/25 70/3</p> <p>deciding [2] 39/24 59/6</p>	<p>decision [10] 23/3 39/7 39/9 52/25 53/2 53/3 53/4 53/8 56/23 57/25</p> <p>declared [1] 73/3</p> <p>decreases [1] 27/14</p> <p>deemed [1] 32/6</p> <p>defeats [1] 11/13</p> <p>defendant [3] 1/7 1/17 9/19</p> <p>deference [2] 41/5 74/19</p> <p>deferential [1] 23/1</p> <p>define [10] 10/1 16/6 42/1 54/19 55/20 56/4 56/5 57/10 58/11 61/25</p> <p>defined [5] 41/24 54/1 54/4 54/5 55/3</p> <p>defines [1] 11/9</p> <p>defining [1] 42/22</p> <p>definition [29] 16/16 16/21 16/22 16/24 16/25 17/10 17/12 17/20 17/22 41/23 42/16 44/22 54/11 54/20 55/6 55/11 55/12 55/15 56/7 56/24 57/6 58/1 58/1 58/2 58/5 58/24 58/25 59/2 59/9</p> <p>definitions [17] 13/22 16/3 16/5 16/15 16/17 17/2 18/15 41/22 42/25 54/21 55/2 55/3 57/10 57/20 58/16 58/17 59/16</p> <p>Delaware [1] 19/3</p> <p>democracies [1] 29/20</p> <p>democratic [1] 28/11</p> <p>denominator [1] 8/5</p> <p>deny [1] 75/2</p> <p>deputy [1] 77/3</p> <p>Derby [1] 14/10</p> <p>derivatives [9] 51/2 52/2 61/2 61/10 61/12 61/17 62/3 67/3 69/23</p> <p>described [1] 19/9</p> <p>describing [1] 66/5</p> <p>description [1] 64/19</p> <p>deserves [1] 77/12</p> <p>designed [2] 57/18 72/16</p> <p>desired [2] 17/5 20/17</p> <p>Despite [1] 27/5</p> <p>destroy [1] 26/6</p> <p>determination [8] 11/21 41/6 53/17 58/9 60/20 64/23 65/17 65/23</p> <p>determine [10] 3/18 15/21 15/22 56/7 57/23 58/12 60/18 61/18 62/12 75/18</p> <p>determined [6] 38/17 38/22 39/2 39/5 60/16 65/11</p> <p>deters [1] 26/6</p> <p>dictate [1] 65/4</p> <p>dictionaries [3] 16/18 42/3 54/4</p>
--	--	---	--	--

<p>D</p> <p>dictionary [12] 13/22 16/3 16/14 17/1 17/17 41/22 54/11 54/12 54/21 57/10 58/24 59/7 did [16] 4/3 9/6 16/2 27/16 37/24 40/9 40/18 47/15 49/9 54/3 57/3 58/11 64/12 64/23 75/21 77/7</p> <p>didn't [23] 17/20 33/7 33/9 33/18 38/12 38/19 40/1 47/11 50/16 50/17 52/25 53/3 53/4 56/4 56/5 56/5 56/6 63/18 74/14 74/19 74/20 74/22 75/10</p> <p>difference [9] 13/3 16/1 25/22 36/22 42/21 48/25 65/16 69/18 69/21</p> <p>differences [2] 69/12 69/19</p> <p>different [14] 9/16 10/3 16/17 17/6 20/11 24/6 24/13 24/20 24/22 27/2 32/2 52/13 52/13 58/4</p> <p>differently [2] 20/12 21/4</p> <p>difficulty [1] 58/14</p> <p>diffuse [2] 62/24 64/9</p> <p>diffused [1] 26/2</p> <p>direct [20] 23/25 24/17 24/21 25/19 25/21 26/5 26/16 26/20 27/8 27/21 27/24 28/2 28/13 28/14 28/18 36/5 36/16 64/16 64/17 65/6</p> <p>direct-effects [1] 64/16</p> <p>directly [6] 8/25 26/18 27/1 29/4 35/18 43/2</p> <p>director [1] 24/5</p> <p>disagree [6] 13/3 13/25 13/25 22/19 37/7 42/16</p> <p>disallowed [1] 73/23</p> <p>disallows [1] 51/13</p> <p>disclaiming [1] 17/22</p> <p>discover [1] 61/22</p> <p>discovery [3] 61/1 61/16 63/3</p> <p>discrete [1] 5/14</p> <p>discretion [2] 36/13 65/12</p> <p>discuss [1] 39/10</p> <p>discussion [4] 14/24 28/8 46/5 77/21</p> <p>dispositive [2] 5/17 22/17</p> <p>dispute [8] 3/20 3/23 13/20 19/19 37/10 43/4 45/10 65/14</p> <p>disputing [1] 13/21</p> <p>disseminate [1] 68/5</p> <p>disseminated [1] 70/19</p> <p>distinguish [1] 52/23</p> <p>distract [1] 28/21</p> <p>distraction [1] 52/9</p> <p>DISTRICT [3] 1/1 1/1</p>	<p>1/10</p> <p>diverge [1] 36/15</p> <p>division [1] 69/15</p> <p>do [43] 3/23 4/24 7/9 8/8 9/21 12/5 12/6 12/12 16/10 18/11 18/14 20/14 20/23 22/2 27/12 27/15 28/22 28/24 29/7 31/20 31/25 32/3 34/23 34/25 39/13 39/15 45/2 46/3 46/18 46/18 47/11 51/6 51/6 52/22 54/19 60/3 66/22 69/6 69/7 69/10 71/6 75/17 77/9</p> <p>does [28] 3/17 4/24 6/12 6/13 6/13 7/7 11/18 13/12 13/12 13/13 14/6 17/10 17/25 20/22 22/2 26/6 31/21 31/21 37/19 38/14 39/11 43/13 43/18 48/17 48/17 48/20 51/2 57/5</p> <p>doesn't [39] 6/19 8/18 9/11 10/15 12/5 15/17 17/23 20/21 21/9 21/15 21/16 25/16 26/19 27/6 29/1 31/17 31/20 37/17 40/3 42/1 44/24 48/1 50/9 52/8 53/6 55/19 55/23 58/1 61/25 63/24 64/4 64/4 64/18 65/15 66/12 67/14 70/15 75/22 76/4</p> <p>doing [5] 9/21 24/25 49/16 53/9 68/12</p> <p>dollars [1] 37/2</p> <p>don't [54] 2/12 2/16 3/20 4/11 4/21 8/6 8/10 8/16 8/16 8/19 8/25 10/1 10/24 12/5 13/24 15/6 15/15 18/17 19/9 19/19 20/2 21/7 21/8 21/12 22/18 23/5 23/13 28/21 29/20 32/23 34/22 34/25 35/8 35/14 36/1 36/4 37/4 37/9 39/1 40/12 42/15 45/5 45/9 49/3 52/21 56/3 57/20 64/16 65/14 71/23 73/17 75/23 77/17 77/19</p> <p>done [11] 6/25 7/5 15/9 15/9 15/10 15/20 15/20 15/21 40/14 75/14 75/19</p> <p>down [1] 63/14</p> <p>draw [4] 21/17 68/9 70/7 71/11</p> <p>drawn [3] 67/13 70/18 72/6</p> <p>dress [1] 20/8</p> <p>driven [1] 76/20</p> <p>drop [1] 73/5</p> <p>during [1] 67/22</p>	<p>E</p> <p>each [6] 18/3 30/2 39/19 41/9 41/11 41/11</p> <p>earlier [5] 14/18 17/11 20/2 59/19 76/12</p> <p>easy [3] 18/11 18/12 44/17</p> <p>economic [47] 15/8 15/15 15/18 20/3 20/21 23/16 23/18 23/23 23/25 25/2 25/20 27/8 27/21 28/6 28/17 30/7 36/9 36/13 36/14 37/8 60/21 60/22 61/25 62/2 62/4 62/9 62/14 62/16 62/19 62/22 63/17 63/20 63/21 63/23 63/23 64/3 64/6 64/9 64/11 64/17 64/22 64/25 65/6 65/10 69/22 70/3 74/21</p> <p>effect [7] 26/14 26/16 26/20 26/25 27/8 36/17 64/17</p> <p>Effective [1] 29/25</p> <p>effects [17] 25/19 25/20 26/5 26/7 27/13 27/24 27/24 28/2 28/13 28/15 28/17 28/18 30/8 36/16 62/19 62/22 64/16</p> <p>effort [1] 30/9</p> <p>either [5] 5/11 8/23 25/16 67/4 73/23</p> <p>election [53] 3/1 5/15 5/17 5/20 5/25 6/9 9/5 15/24 18/1 18/11 19/11 19/20 24/7 28/3 29/11 30/3 32/13 32/16 51/9 51/12 51/13 51/16 51/17 52/23 53/3 57/9 57/12 57/13 59/12 60/4 64/10 64/23 65/18 65/20 65/22 67/5 70/11 70/24 71/1 72/20 72/20 73/8 73/11 73/15 73/20 73/20 74/1 74/2 74/6 74/7 74/15 74/24 74/25</p> <p>election-betting [2] 51/12 60/4</p> <p>elections [69] 2/23 4/20 6/5 6/8 6/16 6/18 6/19 8/19 8/23 12/8 15/19 15/21 18/12 19/18 20/5 20/9 20/11 21/15 25/3 25/9 25/20 26/22 29/1 29/16 29/22 30/6 30/9 30/13 30/15 31/7 31/8 31/14 42/11 46/14 47/6 47/7 47/9 47/16 48/5 48/8 49/7 50/11 50/20 51/9 51/10 51/15 53/15 53/16 54/8 55/9 55/18 56/7 57/5 57/11 57/19 60/8 65/4 65/7 66/7 66/14 66/22 67/4 68/6 70/20 71/12 73/16 73/23 74/5 76/13</p>	<p>electoral [2] 9/6 72/16</p> <p>elements [1] 3/15</p> <p>eligible [2] 42/7 44/12</p> <p>else [2] 12/13 36/8</p> <p>elsewhere [5] 11/3 35/5 35/6 49/17 76/8</p> <p>embarrass [1] 77/2</p> <p>emissions [2] 31/17 31/19</p> <p>Emmy [1] 76/15</p> <p>emphasize [1] 39/20</p> <p>emphasizing [1] 40/21</p> <p>enact [1] 64/18</p> <p>enacted [1] 11/22</p> <p>enactment [1] 64/11</p> <p>end [3] 21/21 22/24 48/6</p> <p>endurance [1] 19/7</p> <p>enemy's [1] 45/4</p> <p>energy [2] 24/14 28/10</p> <p>enforcement [6] 55/11 67/10 69/2 69/16 69/20 71/8</p> <p>engage [3] 23/3 24/8 74/20</p> <p>English [1] 17/1</p> <p>enough [12] 6/15 7/9 25/21 38/18 42/8 42/11 46/9 46/11 47/18 47/18 60/8 69/13</p> <p>ensure [2] 66/25 67/12</p> <p>ensuring [2] 68/20 71/10</p> <p>entail [2] 41/20 42/13</p> <p>entails [1] 42/18</p> <p>enter [1] 61/12</p> <p>entering [1] 61/9</p> <p>entire [1] 58/12</p> <p>entirely [1] 36/23</p> <p>entities [1] 28/4</p> <p>entitled [2] 74/19 78/5</p> <p>entity [1] 71/22</p> <p>entrusted [1] 71/10</p> <p>enumerated [34] 3/17 3/25 4/10 7/1 7/12 9/14 11/12 11/14 32/11 34/13 39/12 39/14 39/15 42/6 42/12 42/14 43/8 44/2 44/4 44/9 44/13 44/14 44/17 44/20 45/11 45/15 46/10 46/12 48/6 52/18 53/25 59/15 60/17 61/16</p> <p>environment [1] 23/25</p> <p>EPA [1] 31/18</p> <p>equipped [2] 69/7 70/22</p> <p>erroneous [1] 11/25</p> <p>especially [3] 18/6 40/13 74/4</p> <p>ESQ [9] 1/12 1/13 1/13 1/14 1/14 1/18 1/18 1/19 1/19</p> <p>essential [9] 41/20 45/17 46/12 46/13 46/15 47/9 47/17 49/6 53/14</p>	<p>essentially [3] 7/4 21/8 42/14</p> <p>establish [5] 40/3 63/2 63/18 66/11 66/11</p> <p>estimated [1] 35/5</p> <p>evaluated [1] 63/7</p> <p>evaluating [1] 62/16</p> <p>evaluation [2] 60/23 63/22</p> <p>even [32] 4/2 4/11 4/22 5/16 6/8 6/16 8/20 16/16 20/10 20/13 22/19 27/4 28/7 28/17 35/12 39/23 47/13 51/14 53/6 53/8 56/12 63/8 63/16 63/20 63/23 64/3 64/21 65/3 65/10 65/15 70/13 73/3</p> <p>event [98]</p> <p>events [5] 7/24 12/10 25/22 31/16 49/19</p> <p>ever [2] 66/16 73/2</p> <p>every [14] 11/10 11/15 11/17 11/21 45/24 46/6 46/23 48/11 49/1 49/4 59/23 62/3 70/14 76/5</p> <p>everyday [1] 70/17</p> <p>everyone [5] 2/11 25/8 77/10 77/14 77/23</p> <p>everything [6] 12/2 12/13 21/14 24/22 34/16 75/22</p> <p>evidence [5] 23/19 28/1 31/10 32/17 74/20</p> <p>exactly [6] 20/23 26/7 27/20 34/9 34/16 50/7</p> <p>examined [2] 38/17 62/3</p> <p>examining [1] 49/6</p> <p>example [32] 4/15 7/20 12/15 12/18 12/20 12/23 13/1 13/5 14/9 16/20 19/3 24/11 26/4 26/4 27/12 32/6 35/9 44/21 45/2 48/20 48/21 59/19 61/3 61/4 63/25 67/16 68/13 71/4 71/13 71/13 72/14 76/16</p> <p>examples [15] 15/4 24/12 24/16 25/5 25/12 25/24 28/9 35/13 44/18 44/25 44/25 45/3 56/6 57/11 67/6</p> <p>exceed [1] 7/21</p> <p>exchange [9] 3/11 3/13 9/2 9/7 15/15 21/10 50/14 50/15 73/21</p> <p>exchanges [1] 68/21</p> <p>excluded [1] 43/14</p> <p>exclusion [1] 57/16</p> <p>exclusive [1] 52/1</p> <p>exist [7] 25/10 25/20 30/25 31/6 53/7 66/13 76/5</p> <p>existed [1] 29/19</p> <p>existence [10] 15/16 17/7 29/21 52/25 53/2 53/4 66/11 67/2 71/8</p>
--	--	---	--	---

<p>E</p> <p>existence... [1] 72/15 expand [1] 70/22 expected [1] 62/5 expert [1] 69/14 explain [5] 12/4 20/13 23/6 27/20 30/4 explained [3] 22/17 25/23 41/3 explains [4] 23/23 24/6 24/20 24/22 expressing [1] 73/14 extent [5] 26/13 26/17 26/25 43/16 59/9 external [2] 20/2 20/21 extrapolate [1] 53/8 extrapolation [2] 46/19 47/15</p>	<p>50/14 67/3 68/20 feeling [2] 29/14 29/20 feels [3] 8/12 29/11 31/12 Feinstein [4] 14/24 54/15 62/11 62/11 fell [1] 50/22 few [4] 18/4 18/9 18/24 25/12 fight [2] 14/6 19/21 fighter [1] 30/10 figure [2] 66/24 76/4 filed [2] 2/18 3/7 fill [1] 46/16 final [3] 12/1 19/24 22/25 finance [1] 30/10 financial [11] 24/3 25/1 61/13 61/15 66/2 66/6 66/8 66/11 66/21 67/5 72/18 find [7] 15/1 50/16 50/17 58/3 58/17 65/15 74/14 finds [1] 41/8 fine [1] 20/9 firm [1] 24/15 first [19] 2/19 3/16 3/23 11/14 16/20 23/21 25/19 27/25 34/19 39/11 41/16 43/12 48/7 54/10 54/15 56/3 69/19 75/9 75/17 fit [4] 53/18 57/5 58/10 58/12 fits [8] 8/1 8/1 18/2 48/7 58/1 58/2 58/22 59/8 five [3] 7/5 7/14 11/12 flesh [1] 13/16 float [1] 67/17 Florida [3] 19/4 49/14 49/17 flourish [1] 73/18 fluctuations [3] 27/22 61/3 61/8 focus [3] 9/16 19/25 36/15 focuses [1] 7/13 follow [5] 8/4 9/11 23/16 26/9 28/24 following [2] 3/22 67/17 follows [1] 10/8 Football [1] 15/5 forbid [2] 47/7 50/11 forbids [2] 47/8 47/11 foregoing [1] 78/3 foreign [1] 45/4 forever [1] 29/19 form [3] 23/1 29/12 71/24 formal [4] 37/16 37/17 37/19 39/23 former [1] 23/22 forms [3] 14/14 25/10 29/19 formulations [1] 62/15</p>	<p>forth [5] 4/9 22/23 37/13 50/1 52/17 forward [1] 42/17 found [10] 11/7 16/15 29/25 54/11 59/1 62/22 63/8 64/7 70/1 74/21 four [5] 7/2 7/10 39/9 39/17 41/16 framework [6] 3/22 4/9 5/1 5/18 33/10 37/11 Franklin [3] 77/2 77/3 77/11 Fransha [1] 50/24 fraud [3] 69/3 72/8 72/11 fraudulent [1] 72/13 frequently [3] 24/8 40/14 55/5 frustrated [1] 52/5 frustrating [2] 52/4 52/6 fuel [2] 61/5 61/6 full [2] 40/3 48/6 fully [1] 17/20 fundamental [1] 25/25 funding [2] 24/23 45/6 Furman [1] 23/22 further [7] 14/4 21/22 21/23 34/21 38/19 60/13 76/23 futures [8] 1/6 1/20 2/8 35/16 37/24 54/17 61/20 61/21</p>	<p>16/8 16/8 16/9 16/11 17/15 18/15 20/1 20/10 20/14 20/25 21/2 32/25 39/14 41/14 45/16 45/18 45/18 53/20 53/22 53/23 53/24 54/1 54/9 54/11 54/11 54/21 55/8 56/1 56/18 57/1 57/1 57/2 57/6 57/6 57/14 57/17 58/11 58/13 58/21 59/2 59/23 60/6 60/6 60/12 62/13 76/11 gaming's [1] 58/11 gave [3] 12/15 12/18 48/21 general [2] 1/20 61/2 generally [7] 10/19 16/17 20/3 33/23 40/19 43/3 61/18 generate [1] 73/10 generation [1] 74/14 gerrymandered [1] 56/24 gerrymandering [1] 59/4 get [27] 4/11 7/10 8/10 18/7 18/10 20/25 21/18 27/6 27/16 28/20 30/13 32/22 32/24 33/5 34/22 36/1 37/4 38/5 39/19 41/16 45/6 56/3 56/6 63/4 66/24 72/22 76/21 gets [3] 14/23 44/11 67/25 getting [3] 18/17 18/22 47/1 gist [1] 8/14 give [3] 15/4 45/3 67/6 given [2] 27/1 58/4 gives [4] 12/12 21/10 24/11 41/4 go [14] 8/10 11/6 11/19 18/2 21/22 22/18 23/8 34/17 51/23 52/11 53/10 61/9 61/10 65/20 goal [1] 25/18 goes [3] 6/11 13/3 67/23 going [35] 2/19 4/6 6/21 6/22 6/24 7/21 7/23 8/13 14/9 14/11 14/17 20/7 20/8 20/12 27/17 27/23 28/23 37/2 37/24 42/23 48/22 49/20 56/21 58/3 64/3 67/8 76/3 76/7 76/8 76/15 77/2 77/4 77/7 77/12 77/19 golf [1] 15/5 good [12] 2/2 2/6 2/7 2/11 22/14 29/1 29/22 37/22 64/5 66/20 76/20 77/1 good-faith [1] 76/20 gosh [1] 45/5 got [4] 16/24 18/24 23/20 24/5</p>	<p>governance [1] 15/22 government [3] 9/19 15/22 69/19 grammatically [1] 10/14 Grammy's [1] 56/15 grant [1] 75/3 grants [1] 74/1 grave [1] 74/15 Great [1] 3/6 greatly [1] 70/22 green [2] 24/14 28/10 grounding [1] 70/4 group [1] 71/22 groups [1] 66/1 grown [1] 35/17 guess [5] 29/18 33/4 58/14 58/20 65/1 gut [1] 28/25</p>
<p>F</p> <p>face [3] 24/8 24/21 50/3 facilitate [2] 15/10 15/21 fact [8] 10/8 15/2 32/13 33/2 33/7 35/21 65/4 72/25 factor [1] 53/6 factors [5] 5/16 5/17 60/22 64/22 65/21 facts [1] 52/13 fair [1] 17/6 fairly [1] 44/17 faith [1] 76/20 fake [1] 73/9 faked [1] 70/12 fall [12] 3/24 4/3 4/21 6/18 7/24 53/25 54/8 56/1 56/7 56/18 60/5 70/16 falls [6] 5/3 11/10 38/13 49/15 49/16 54/6 false [3] 67/21 68/5 72/24 familiar [1] 25/10 famous [1] 14/23 far [9] 3/19 7/10 22/18 32/22 43/25 44/11 52/11 53/10 71/16 farfetched [3] 68/10 71/4 73/11 fascinating [1] 76/16 fatal [1] 11/2 favor [1] 64/12 FDA [1] 24/22 fear [1] 26/15 feature [12] 26/8 41/20 42/14 45/14 45/17 46/12 46/13 46/15 47/9 47/17 49/6 53/14 features [1] 27/15 federal [6] 39/16 51/1 52/1 52/2 54/5 68/18 federally [4] 50/14 50/14 67/3 68/20 federally-registered [1] 50/14 federally-regulated [3]</p>	<p>face [3] 24/8 24/21 50/3 facilitate [2] 15/10 15/21 fact [8] 10/8 15/2 32/13 33/2 33/7 35/21 65/4 72/25 factor [1] 53/6 factors [5] 5/16 5/17 60/22 64/22 65/21 facts [1] 52/13 fair [1] 17/6 fairly [1] 44/17 faith [1] 76/20 fake [1] 73/9 faked [1] 70/12 fall [12] 3/24 4/3 4/21 6/18 7/24 53/25 54/8 56/1 56/7 56/18 60/5 70/16 falls [6] 5/3 11/10 38/13 49/15 49/16 54/6 false [3] 67/21 68/5 72/24 familiar [1] 25/10 famous [1] 14/23 far [9] 3/19 7/10 22/18 32/22 43/25 44/11 52/11 53/10 71/16 farfetched [3] 68/10 71/4 73/11 fascinating [1] 76/16 fatal [1] 11/2 favor [1] 64/12 FDA [1] 24/22 fear [1] 26/15 feature [12] 26/8 41/20 42/14 45/14 45/17 46/12 46/13 46/15 47/9 47/17 49/6 53/14 features [1] 27/15 federal [6] 39/16 51/1 52/1 52/2 54/5 68/18 federally [4] 50/14 50/14 67/3 68/20 federally-registered [1] 50/14 federally-regulated [3]</p>	<p>G</p> <p>gain [5] 35/6 35/11 66/2 67/5 72/18 Gallery [1] 7/22 gamble [4] 16/21 17/3 51/10 66/14 gambling [43] 8/24 16/1 16/6 16/8 16/8 16/9 16/9 16/12 16/16 17/7 17/12 18/15 19/22 21/8 45/15 51/9 51/14 51/14 51/16 54/13 54/17 54/18 54/19 54/22 55/1 55/2 55/4 55/6 55/8 55/11 55/13 56/2 57/7 57/8 57/17 58/3 58/5 59/10 59/17 59/23 60/6 60/7 73/23 game [31] 13/14 14/8 14/8 14/10 14/11 14/13 14/13 14/14 14/22 15/7 15/17 15/17 16/12 16/21 16/24 16/25 17/8 17/18 17/25 18/16 19/16 19/16 20/1 20/21 21/3 55/19 55/20 55/22 55/23 56/16 76/13 games [13] 15/6 15/13 15/19 15/23 17/3 18/20 19/2 20/2 20/5 21/7 21/8 21/15 57/1 gaming [56] 7/14 14/5 14/6 14/7 14/8 14/22 15/5 15/24 16/1 16/7</p>	<p>had [14] 4/13 6/16 7/20 7/21 7/24 33/9 40/14 42/20 47/4 51/18 64/21 69/6 73/2 73/2 half [1] 18/6 hand [1] 23/9 happen [5] 26/24 28/7 66/20 71/6 74/7 happened [2] 28/12 67/1 happening [1] 29/3 happens [1] 66/5 happy [1] 77/11 hard [2] 31/2 31/4 harm [1] 30/23 harms [1] 23/9 Harvard [1] 23/21 has [33] 3/16 3/22 4/14 13/24 14/1 14/4 15/8 16/11 20/14 21/23 23/2 23/18 28/9 28/12 29/7 31/18 31/19 32/5 34/17 36/12 41/12 41/25 43/7 45/11 55/11 62/6 62/19 63/23 65/5 68/4 70/5 72/5 76/16 hasn't [1] 7/5 hate [1] 45/3 have [99] haven't [2] 2/21 75/14 having [7] 11/14 26/1 30/24 41/9 42/22 58/14 60/16 he [8] 23/23 24/1 24/20 24/21 33/13 73/2 73/2 73/3 hear [2] 16/2 75/21 heard [2] 42/22 75/23 hearing [5] 1/9 2/20 58/15 77/4 77/14 hedge [5] 24/9 61/7 61/9 62/21 63/17 hedgers [2] 35/25 36/1 hedging [23] 24/9 25/3 26/1 26/2 35/3 36/5 36/5 36/18 36/19 37/2 61/1 61/1 61/11 61/15</p>	

<p>H</p> <p>hedging... [9] 62/6 62/14 63/3 63/10 63/11 63/18 64/2 64/9 64/19</p> <p>held [5] 41/25 49/4 50/25 52/10 59/24</p> <p>helpful [6] 2/14 25/6 27/18 28/9 30/1 77/1</p> <p>helps [1] 26/4</p> <p>HENRY [2] 1/13 2/4</p> <p>her [3] 77/4 77/13 77/13</p> <p>here [57] 2/11 3/12 3/22 17/9 18/4 22/10 22/15 22/20 23/7 23/21 24/20 24/25 27/20 28/2 28/18 30/14 30/21 32/2 32/24 35/4 37/6 37/11 39/2 41/2 42/4 42/10 43/4 45/12 45/18 46/13 47/6 47/15 51/6 51/11 52/10 53/6 53/9 53/10 53/13 56/23 58/4 58/16 58/23 59/1 59/24 60/2 60/3 60/25 63/22 64/6 64/23 65/18 68/3 68/8 69/18 72/6 77/8</p> <p>here's [2] 22/11 67/16</p> <p>hers [1] 77/14</p> <p>herself [1] 41/8</p> <p>high [1] 67/25</p> <p>higher [1] 18/4</p> <p>higher-level [1] 18/4</p> <p>highlighted [2] 23/21 62/18</p> <p>hire [1] 8/10</p> <p>history [5] 11/18 14/23 18/20 21/6 71/1</p> <p>hit [3] 8/10 26/13 49/14</p> <p>hold [1] 59/25</p> <p>honest [1] 28/25</p> <p>Honor [34] 2/2 2/7 3/6 3/7 7/3 14/4 14/25 21/23 22/13 22/14 25/10 25/21 30/17 34/21 37/5 37/12 37/22 38/2 39/21 40/15 40/22 41/8 47/22 53/12 60/13 62/19 64/24 68/18 69/11 71/14 75/2 75/9 76/12 76/23</p> <p>Honor's [1] 46/17</p> <p>HONORABLE [1] 1/9</p> <p>hope [5] 17/4 53/11 58/17 58/20 77/20</p> <p>horse [2] 14/10 55/21</p> <p>horseracing [1] 15/5</p> <p>hot [1] 27/23</p> <p>hour's [1] 38/2</p> <p>House [6] 3/9 5/14 5/23 5/24 32/14 73/14</p> <p>how [29] 10/8 11/19 20/22 20/22 24/8 30/14 30/14 36/11 37/1 37/3 39/11 40/3 40/13 41/13 42/21 44/25 46/3 46/5 48/11 54/19 55/2 56/11 66/15 66/16 71/20 73/7</p>	<p>75/24 76/3 76/7</p> <p>however [1] 57/3</p> <p>human [2] 19/7 69/1</p> <p>hurricane [7] 26/3 26/5 26/13 26/18 27/12 49/14 49/19</p> <p>hurricanes [1] 27/12</p> <p>hypothetical [3] 8/9 10/18 76/5</p> <p>Hypothetically [1] 49/12</p> <p>I</p> <p>I'd [4] 7/14 16/1 18/4 29/18</p> <p>I'll [18] 4/10 14/4 18/8 22/18 22/22 23/10 28/9 29/9 34/21 38/1 38/5 41/16 54/5 60/22 64/23 67/6 76/11 77/22</p> <p>I'm [39] 2/18 4/17 5/4 6/22 6/25 8/13 12/23 13/2 21/18 22/15 28/23 35/15 36/9 36/23 37/23 37/24 38/8 38/14 38/14 38/23 40/21 47/1 47/21 48/16 49/12 49/13 49/16 52/5 56/9 56/12 58/3 58/14 58/15 59/17 66/18 67/7 68/12 77/2 77/11</p> <p>I've [2] 23/20 47/22</p> <p>iceberg [1] 25/13</p> <p>icky [4] 29/11 29/14 30/12 30/13</p> <p>idea [3] 25/25 29/2 64/5</p> <p>ideally [1] 2/23</p> <p>identical [2] 19/4 24/2</p> <p>identified [1] 65/25</p> <p>identifies [1] 27/19</p> <p>ignore [3] 23/5 51/13 74/20</p> <p>illegal [4] 50/19 50/22 51/10 52/8</p> <p>illegally [1] 70/20</p> <p>imagine [5] 6/4 31/2 31/4 71/19 71/22</p> <p>immediate [1] 35/13</p> <p>immediately [4] 8/4 28/4 28/5 35/10</p> <p>impact [3] 31/8 64/9 65/5</p> <p>impacted [1] 70/10</p> <p>impacts [5] 23/24 25/2 27/21 28/7 36/13</p> <p>implicated [1] 33/21</p> <p>implications [2] 23/18 68/3</p> <p>implies [1] 19/17</p> <p>important [16] 4/18 8/2 14/1 16/16 17/9 25/25 30/14 32/6 50/11 51/19 52/3 67/18 69/12 69/18 69/19 74/4</p> <p>imported [1] 17/11</p> <p>imposed [1] 64/15</p> <p>impossible [1] 10/13</p>	<p>improper [1] 73/15</p> <p>incentive [1] 66/12</p> <p>incentives [7] 8/8 8/11 30/15 31/5 66/1 66/6 66/21</p> <p>incentivize [7] 8/16 66/14 67/4 70/6 72/15 72/18 74/23</p> <p>include [1] 57/10</p> <p>included [3] 55/6 55/14 65/25</p> <p>includes [6] 56/24 57/14 59/2 59/11 60/7 60/8</p> <p>including [3] 19/18 65/21 73/13</p> <p>incorporates [1] 17/17</p> <p>increases [1] 61/11</p> <p>incurred [1] 35/5</p> <p>independent [1] 10/2</p> <p>indicates [1] 51/15</p> <p>indirect [6] 26/5 27/13 27/22 27/24 28/17 36/17</p> <p>individuals [1] 66/1</p> <p>industry [1] 24/12</p> <p>influence [5] 29/16 30/6 66/15 70/11 70/11</p> <p>influenced [2] 72/13 73/8</p> <p>influencing [1] 30/9</p> <p>informal [4] 37/19 39/21 40/21 52/12</p> <p>information [10] 25/11 34/11 40/6 68/6 70/10 70/13 70/19 72/25 73/10 74/13</p> <p>ingenuity [1] 69/1</p> <p>inherent [1] 15/8</p> <p>inherently [1] 69/21</p> <p>initial [2] 31/6 48/14</p> <p>initially [1] 42/21</p> <p>injunction [1] 2/21</p> <p>inquiry [3] 32/12 43/12 49/2</p> <p>inserted [1] 15/1</p> <p>insider [2] 34/11 34/17</p> <p>insomuch [1] 31/23</p> <p>instance [4] 34/19 40/2 46/7 61/20</p> <p>instead [2] 9/12 17/24</p> <p>institutions [1] 25/2</p> <p>instructive [1] 18/23</p> <p>instrument [1] 10/7</p> <p>instruments [4] 10/1 25/3 35/24 36/14</p> <p>insurance [1] 26/3</p> <p>integrity [20] 4/18 28/22 29/22 51/16 64/24 65/18 65/20 65/22 67/12 68/20 71/2 71/10 73/15 74/2 74/3 74/6 74/7 74/15 74/24 74/25</p> <p>intended [2] 50/4 54/17</p> <p>intent [2] 48/13 63/17</p> <p>interchangeable [3] 54/12 54/24 57/7</p>	<p>interest [50] 3/19 4/4 4/12 5/1 11/16 11/21 22/16 23/8 29/5 29/7 29/14 30/20 30/21 30/23 32/12 32/21 32/24 33/1 33/5 33/6 34/23 36/5 39/6 39/18 40/19 41/6 42/7 46/24 48/15 49/15 50/3 50/12 51/23 60/14 60/19 61/13 61/15 61/17 61/24 62/1 62/4 63/24 64/4 64/12 64/22 65/13 65/24 68/7 73/25 74/8</p> <p>interested [1] 35/18</p> <p>interesting [1] 35/7</p> <p>interests [4] 51/19 52/3 60/25 62/2</p> <p>intermediate [1] 17/24</p> <p>Internet [1] 55/10</p> <p>interpret [1] 46/19</p> <p>interpretation [23] 4/1 6/23 8/18 8/21 9/11 11/17 11/25 12/4 12/11 15/7 17/15 17/17 18/8 41/7 41/15 52/7 58/19 60/10 75/24 76/7 76/9 76/12 76/21</p> <p>interpretations [1] 21/12</p> <p>interprets [1] 45/13</p> <p>interrupt [1] 3/4</p> <p>interrupted [1] 47/22</p> <p>interruption [1] 24/2</p> <p>intervening [3] 5/15 5/16 25/22</p> <p>intervention [1] 2/25</p> <p>intrinsic [1] 15/18</p> <p>intuition [1] 31/11</p> <p>investigate [4] 34/18 68/16 69/14 70/15</p> <p>investigates [3] 69/2 69/16 71/9</p> <p>investigating [6] 67/13 68/9 69/22 69/23 70/19 71/12</p> <p>investigation [1] 69/20</p> <p>investigations [2] 70/5 70/8</p> <p>investing [1] 35/23</p> <p>involve [47] 3/16 6/8 7/8 7/9 9/22 10/21 11/11 12/7 12/8 12/21 13/3 13/8 13/21 13/22 13/24 13/25 14/1 15/13 24/22 39/11 39/13 39/15 41/14 41/18 41/24 42/5 42/8 42/22 43/6 43/22 44/2 44/8 44/11 44/16 44/23 45/1 45/1 45/11 46/1 46/6 46/9 47/5 47/6 49/10 55/19 60/13 60/17</p> <p>involved [9] 9/21 12/16 13/20 41/24 42/12 64/10 68/15 71/23 72/23</p> <p>involves [17] 10/12</p>	<p>10/19 14/13 17/12 18/16 21/3 43/8 44/4 44/9 44/14 45/5 45/7 48/24 49/7 49/20 51/21 59/23</p> <p>involving [7] 5/13 10/11 20/1 32/14 33/3 43/9 69/20</p> <p>is [332]</p> <p>isn't [1] 76/13</p> <p>isolation [1] 14/20</p> <p>issue [17] 6/11 21/24 22/17 22/23 33/22 35/4 38/7 38/22 39/2 39/24 42/25 46/2 53/11 57/17 57/21 58/6 68/16</p> <p>issues [5] 5/8 39/10 39/20 41/3 41/16</p> <p>it [247]</p> <p>it's [110]</p> <p>its [33] 3/8 15/11 20/17 22/9 32/1 41/3 41/5 41/5 41/19 42/1 42/8 45/4 46/7 50/25 51/20 52/25 53/2 53/3 53/4 53/17 54/4 54/11 57/9 57/14 61/19 65/11 65/17 67/15 70/2 70/17 71/1 71/7 71/10</p> <p>itself [10] 6/9 10/6 12/22 15/10 43/9 44/24 46/1 62/2 64/18 67/5</p> <p>J</p> <p>JA [1] 34/5</p> <p>JACOB [2] 1/12 2/2</p> <p>Jason [1] 23/22</p> <p>jet [2] 61/5 61/6</p> <p>JIA [1] 1/9</p> <p>JMC [1] 1/4</p> <p>JOHN [2] 1/13 2/4</p> <p>Johns [4] 1/23 78/3 78/8 78/9</p> <p>Jones [2] 1/15 2/3</p> <p>Josh [1] 2/4</p> <p>JOSHUA [1] 1/14</p> <p>JPMorgan [2] 24/6 25/4</p> <p>JUDGE [1] 1/10</p> <p>judgment [6] 2/12 71/7 71/11 74/17 75/2 75/3</p> <p>judgments [1] 41/5</p> <p>jump [2] 38/6 46/5</p> <p>June [1] 78/8</p> <p>jurisdiction [3] 52/1 70/15 70/23</p> <p>jurisdictions [1] 50/19</p> <p>just [78] 2/18 3/20 3/25 4/7 5/11 6/14 8/11 9/16 9/25 10/2 10/10 10/14 10/16 11/11 12/5 13/15 13/16 13/22 14/20 16/3 17/8 18/6 18/9 19/9 19/11 19/20 19/24 20/10 22/3 22/6 22/22 23/20 24/16 24/24 25/11 25/12 26/11 28/2 28/12 28/25 31/2 31/9</p>
---	--	---	--	--

<p>J</p> <p>just... [36] 31/15 31/22 33/17 33/20 34/6 34/18 34/22 35/6 35/25 38/4 38/7 38/8 38/13 38/14 39/21 39/24 40/6 42/20 43/2 44/3 46/2 47/1 47/16 47/23 48/16 48/25 55/23 59/9 59/18 63/21 65/4 67/9 68/25 73/17 77/13 77/18</p>	<p>laws [19] 8/25 9/7 46/21 46/22 47/7 48/8 48/10 49/7 49/10 50/11 51/3 51/22 51/23 52/8 52/15 52/25 53/2 53/5 53/16</p> <p>lawsuit [2] 19/22 33/22</p> <p>lawyerly [1] 18/7</p> <p>leads [1] 19/25</p> <p>learning [1] 35/15</p> <p>least [6] 11/7 26/21 43/24 44/11 53/19 59/14</p> <p>leave [2] 77/2 77/20</p> <p>leaves [2] 7/12 17/16</p> <p>legislation [9] 23/24 24/23 24/24 27/5 28/5 28/5 28/7 64/11 65/3</p> <p>legislative [3] 14/23 18/20 21/6</p> <p>lenient [1] 40/25</p> <p>less [1] 36/23</p> <p>let [8] 6/2 33/20 35/1 38/5 38/7 46/7 54/20 74/6</p> <p>let's [4] 8/20 49/12 53/22 65/20</p> <p>letters [1] 73/12</p> <p>level [5] 7/21 8/11 18/4 30/5 61/18</p> <p>levies [1] 56/23</p> <p>life [2] 31/7 66/6</p> <p>like [33] 2/23 5/8 5/9 7/14 18/4 19/2 19/11 19/20 20/2 22/6 22/7 22/10 26/3 26/10 27/16 29/1 29/2 29/17 36/23 38/24 40/8 45/5 47/14 50/17 55/23 55/23 56/15 56/16 61/20 64/24 69/5 69/8 76/14</p> <p>likely [1] 71/6</p> <p>limit [3] 11/23 68/25 68/25</p> <p>limited [1] 64/19</p> <p>limits [3] 71/15 71/19 71/21</p> <p>Lincoln [3] 14/25 54/15 62/11</p> <p>Lincoln's [1] 54/16</p> <p>line [5] 10/15 12/10 21/17 39/1 63/14</p> <p>lines [2] 8/15 14/18</p> <p>linked [1] 55/8</p> <p>links [1] 22/6</p> <p>LIOI [2] 1/14 2/5</p> <p>liquid [1] 35/25</p> <p>Lisboa [1] 24/11</p> <p>list [7] 6/5 7/2 7/6 7/11 22/11 48/6 71/17</p> <p>listed [7] 2/25 7/5 15/14 34/8 39/25 45/21 51/5</p> <p>listen [1] 3/5</p> <p>listing [2] 3/8 3/14</p> <p>literally [3] 6/13 13/6 15/3</p> <p>little [5] 31/12 37/18</p>	<p>46/8 46/8 65/2</p> <p>lives [1] 30/7</p> <p>LLC [1] 1/3</p> <p>logic [1] 18/3</p> <p>logical [1] 47/14</p> <p>long [2] 41/25 76/17</p> <p>look [14] 5/13 16/2 16/16 18/22 19/1 19/14 20/11 21/7 28/23 43/10 52/14 54/3 56/19 76/3</p> <p>looked [7] 54/10 55/2 55/10 57/3 62/4 62/8 63/8</p> <p>looking [8] 7/1 9/13 9/14 13/11 30/21 33/1 45/11 56/12</p> <p>looks [2] 37/18 76/7</p> <p>lose [1] 32/22</p> <p>losing [1] 59/17</p> <p>loss [2] 35/5 35/11</p> <p>losses [1] 35/5</p> <p>lot [12] 5/25 8/13 11/4 14/23 21/25 24/12 28/1 29/2 45/21 67/24 69/16 69/17</p> <p>lots [2] 30/8 30/8</p> <p>lottery [3] 14/14 19/16 19/17</p> <p>Louisiana [2] 1/15 19/15</p> <p>love [1] 16/1</p> <p>lunch [1] 10/19</p>	<p>29/23 30/3 30/16 31/1 31/9 31/24 33/14 34/17 68/14 68/25 69/1 69/3 69/14 69/16 70/5 70/8 70/16 70/18 71/9 72/18 72/24</p> <p>manipulative [2] 67/14 72/12</p> <p>many [25] 5/15 16/4 25/22 27/3 30/14 35/3 36/7 37/1 38/25 48/8 48/10 48/19 49/7 49/10 52/15 55/3 58/16 58/17 63/13 64/10 66/21 67/24 68/21 74/5 77/7</p> <p>MARGARET [2] 1/19 2/9</p> <p>market [22] 25/9 30/24 31/5 31/22 34/7 35/15 35/16 36/4 50/23 51/5 61/7 61/13 61/19 61/22 65/5 67/25 70/18 70/20 72/19 73/10 73/19 74/12</p> <p>market-based [2] 25/9 74/12</p> <p>markets [24] 24/4 25/9 29/19 29/21 35/24 51/2 51/13 52/2 52/2 54/18 61/1 61/2 61/17 67/12 67/14 68/19 68/22 68/24 69/3 69/14 69/17 69/23 70/2 71/10</p> <p>match [1] 73/2</p> <p>match-up [1] 73/2</p> <p>materialize [3] 26/16 26/19 26/25</p> <p>materially [1] 19/4</p> <p>matter [12] 3/25 15/21 21/7 21/9 30/6 30/7 30/7 31/7 42/18 57/18 77/22 78/5</p> <p>matters [1] 36/22</p> <p>may [17] 1/5 3/3 3/18 5/6 5/8 12/23 12/24 15/9 15/10 19/8 26/24 26/25 35/13 38/4 59/8 69/23 70/3</p> <p>maybe [8] 13/1 26/18 28/20 41/8 65/5 65/9 67/20 68/5</p> <p>me [24] 2/3 2/9 2/14 6/2 12/6 21/16 26/4 33/13 33/20 35/17 36/22 38/6 38/7 43/11 43/19 45/16 45/22 46/7 52/4 52/6 54/20 56/11 58/17 63/9</p> <p>mean [21] 11/10 14/6 16/4 20/23 20/24 21/2 31/17 33/18 35/19 43/7 48/11 48/17 48/17 56/10 58/5 58/20 59/22 66/23 71/23 71/24 76/4</p> <p>meaning [29] 16/13 19/17 26/17 33/24 41/10 41/19 42/2 42/2 42/5 42/8 42/9 43/21</p>	<p>44/10 46/7 47/24 53/24 54/4 54/9 54/12 57/7 57/9 57/13 57/15 58/10 58/13 60/5 60/6 60/11 71/20</p> <p>meaningful [2] 36/6 36/6</p> <p>meanings [1] 54/5</p> <p>means [28] 13/21 13/25 19/11 19/12 20/6 23/2 37/1 37/1 39/23 41/13 42/2 42/4 43/7 43/15 46/1 46/7 48/3 55/20 58/3 58/21 61/2 61/12 61/18 62/1 75/25 76/2 76/9 76/22</p> <p>meant [3] 10/12 20/18 36/20</p> <p>measure [1] 66/16</p> <p>mechanical [1] 1/25</p> <p>media [5] 67/17 67/17 68/1 73/6 73/7</p> <p>member [1] 32/7</p> <p>members [2] 4/15 73/13</p> <p>mention [1] 72/21</p> <p>mentioned [2] 22/7 62/10</p> <p>mere [2] 46/2 65/4</p> <p>Merriam [1] 16/20</p> <p>Merriam-Webster [1] 16/20</p> <p>metes [1] 40/3</p> <p>metric [1] 37/5</p> <p>might [21] 10/3 26/6 26/8 26/9 26/14 26/15 26/24 27/14 27/15 27/17 27/23 28/25 30/11 40/4 48/19 52/14 56/19 57/16 58/5 59/19 76/5</p> <p>military [1] 12/18</p> <p>million [2] 71/21 72/1</p> <p>mind [2] 35/9 45/16</p> <p>minimal [1] 69/13</p> <p>minimize [1] 24/9</p> <p>minimizing [1] 24/10</p> <p>minimum [1] 70/4</p> <p>minus [1] 71/5</p> <p>misalignment [1] 70/25</p> <p>mischaracterize [1] 43/5</p> <p>misguided [2] 20/13 29/14</p> <p>misinformation [2] 70/7 74/24</p> <p>misleading [1] 40/12</p> <p>miss [2] 77/13 77/19</p> <p>misses [1] 50/25</p> <p>mission [3] 67/15 69/8 71/1</p> <p>misunderstanding [1] 29/15</p> <p>monetary [1] 65/25</p> <p>money [12] 8/11 8/13 16/21 17/3 30/9 30/13 30/14 35/24 66/7 67/24</p>
<p>K</p> <p>Kalshi [19] 2/3 3/8 22/7 38/1 50/12 50/21 51/5 51/6 51/12 56/22 59/3 62/18 64/14 70/15 71/5 72/21 74/9 74/10 76/16</p> <p>Kalshi's [12] 3/23 8/19 12/6 39/3 39/4 39/25 50/18 51/7 60/16 61/24 71/15 75/2</p> <p>KALSHIEX [1] 1/3</p> <p>keep [2] 22/18 56/21</p> <p>KELLY [1] 1/13</p> <p>Kentucky [1] 14/10</p> <p>key [3] 3/12 9/12 30/5</p> <p>Kid [1] 73/1</p> <p>kind [20] 11/17 22/1 26/2 27/3 27/4 27/8 28/24 29/3 29/23 30/2 32/12 34/6 45/2 48/2 56/15 67/6 68/15 71/25 73/9 73/25</p> <p>kinds [5] 23/7 24/24 31/16 33/1 68/10</p> <p>know [16] 2/16 2/17 4/6 5/24 8/12 20/12 25/10 34/25 37/4 38/7 56/12 59/9 65/8 77/7 77/9 77/17</p> <p>knows [2] 3/7 33/10</p>	<p>level [5] 7/21 8/11 18/4 30/5 61/18</p> <p>levies [1] 56/23</p> <p>life [2] 31/7 66/6</p> <p>like [33] 2/23 5/8 5/9 7/14 18/4 19/2 19/11 19/20 20/2 22/6 22/7 22/10 26/3 26/10 27/16 29/1 29/2 29/17 36/23 38/24 40/8 45/5 47/14 50/17 55/23 55/23 56/15 56/16 61/20 64/24 69/5 69/8 76/14</p> <p>likely [1] 71/6</p> <p>limit [3] 11/23 68/25 68/25</p> <p>limited [1] 64/19</p> <p>limits [3] 71/15 71/19 71/21</p> <p>Lincoln [3] 14/25 54/15 62/11</p> <p>Lincoln's [1] 54/16</p> <p>line [5] 10/15 12/10 21/17 39/1 63/14</p> <p>lines [2] 8/15 14/18</p> <p>linked [1] 55/8</p> <p>links [1] 22/6</p> <p>LIOI [2] 1/14 2/5</p> <p>liquid [1] 35/25</p> <p>Lisboa [1] 24/11</p> <p>list [7] 6/5 7/2 7/6 7/11 22/11 48/6 71/17</p> <p>listed [7] 2/25 7/5 15/14 34/8 39/25 45/21 51/5</p> <p>listen [1] 3/5</p> <p>listing [2] 3/8 3/14</p> <p>literally [3] 6/13 13/6 15/3</p> <p>little [5] 31/12 37/18</p>	<p>lottery [3] 14/14 19/16 19/17</p> <p>Louisiana [2] 1/15 19/15</p> <p>love [1] 16/1</p> <p>lunch [1] 10/19</p> <p>M</p> <p>made [4] 9/19 9/19 65/2 66/20</p> <p>main [1] 6/19</p> <p>maintain [1] 4/18</p> <p>make [25] 8/11 8/13 11/20 25/18 25/22 33/20 35/24 38/12 45/22 48/1 48/14 48/14 49/10 52/8 52/8 53/1 53/2 56/9 57/25 63/24 64/4 64/5 65/16 67/24 72/5</p> <p>makes [13] 9/17 10/14 10/16 11/12 12/11 15/7 15/12 20/4 30/15 34/14 34/19 35/9 47/12</p> <p>making [16] 9/12 13/14 20/23 23/3 23/7 37/13 37/15 37/17 39/22 49/18 58/9 60/20 69/5 75/13 75/14 75/18</p> <p>man [1] 8/10</p> <p>manage [1] 61/3</p> <p>managed [1] 24/3</p> <p>management [1] 35/3</p> <p>managing [1] 24/5</p> <p>manipulate [4] 31/3 67/4 68/2 68/22</p> <p>manipulated [3] 70/20 72/5 74/23</p> <p>manipulating [2] 72/12 72/17</p> <p>manipulation [25] 28/22 29/2 29/12 29/13</p>	<p>match [1] 73/2</p> <p>match-up [1] 73/2</p> <p>materialize [3] 26/16 26/19 26/25</p> <p>materially [1] 19/4</p> <p>matter [12] 3/25 15/21 21/7 21/9 30/6 30/7 30/7 31/7 42/18 57/18 77/22 78/5</p> <p>matters [1] 36/22</p> <p>may [17] 1/5 3/3 3/18 5/6 5/8 12/23 12/24 15/9 15/10 19/8 26/24 26/25 35/13 38/4 59/8 69/23 70/3</p> <p>maybe [8] 13/1 26/18 28/20 41/8 65/5 65/9 67/20 68/5</p> <p>me [24] 2/3 2/9 2/14 6/2 12/6 21/16 26/4 33/13 33/20 35/17 36/22 38/6 38/7 43/11 43/19 45/16 45/22 46/7 52/4 52/6 54/20 56/11 58/17 63/9</p> <p>mean [21] 11/10 14/6 16/4 20/23 20/24 21/2 31/17 33/18 35/19 43/7 48/11 48/17 48/17 56/10 58/5 58/20 59/22 66/23 71/23 71/24 76/4</p> <p>meaning [29] 16/13 19/17 26/17 33/24 41/10 41/19 42/2 42/2 42/5 42/8 42/9 43/21</p>	<p>metes [1] 40/3</p> <p>metric [1] 37/5</p> <p>might [21] 10/3 26/6 26/8 26/9 26/14 26/15 26/24 27/14 27/15 27/17 27/23 28/25 30/11 40/4 48/19 52/14 56/19 57/16 58/5 59/19 76/5</p> <p>military [1] 12/18</p> <p>million [2] 71/21 72/1</p> <p>mind [2] 35/9 45/16</p> <p>minimal [1] 69/13</p> <p>minimize [1] 24/9</p> <p>minimizing [1] 24/10</p> <p>minimum [1] 70/4</p> <p>minus [1] 71/5</p> <p>misalignment [1] 70/25</p> <p>mischaracterize [1] 43/5</p> <p>misguided [2] 20/13 29/14</p> <p>misinformation [2] 70/7 74/24</p> <p>misleading [1] 40/12</p> <p>miss [2] 77/13 77/19</p> <p>misses [1] 50/25</p> <p>mission [3] 67/15 69/8 71/1</p> <p>misunderstanding [1] 29/15</p> <p>monetary [1] 65/25</p> <p>money [12] 8/11 8/13 16/21 17/3 30/9 30/13 30/14 35/24 66/7 67/24</p>
<p>L</p> <p>laid [1] 21/11</p> <p>language [10] 11/20 25/22 36/21 38/24 43/10 43/13 43/20 45/13 52/14 63/5</p> <p>large [2] 73/22 73/24</p> <p>larger [1] 40/2</p> <p>largest [1] 24/7</p> <p>Las [1] 51/17</p> <p>last [5] 4/10 7/3 31/13 77/4 77/13</p> <p>latching [1] 20/16</p> <p>later [1] 73/6</p> <p>law [35] 39/16 41/1 41/14 41/25 45/19 45/23 46/3 46/6 47/6 47/8 47/11 47/16 48/17 48/18 49/17 50/20 50/22 50/23 51/4 51/10 51/13 51/21 53/18 54/5 54/5 55/2 55/3 60/12 63/13 64/18 67/10 69/2 71/8 73/24 74/19</p> <p>lawfully [2] 51/4 51/12</p>	<p>level [5] 7/21 8/11 18/4 30/5 61/18</p> <p>levies [1] 56/23</p> <p>life [2] 31/7 66/6</p> <p>like [33] 2/23 5/8 5/9 7/14 18/4 19/2 19/11 19/20 20/2 22/6 22/7 22/10 26/3 26/10 27/16 29/1 29/2 29/17 36/23 38/24 40/8 45/5 47/14 50/17 55/23 55/23 56/15 56/16 61/20 64/24 69/5 69/8 76/14</p> <p>likely [1] 71/6</p> <p>limit [3] 11/23 68/25 68/25</p> <p>limited [1] 64/19</p> <p>limits [3] 71/15 71/19 71/21</p> <p>Lincoln [3] 14/25 54/15 62/11</p> <p>Lincoln's [1] 54/16</p> <p>line [5] 10/15 12/10 21/17 39/1 63/14</p> <p>lines [2] 8/15 14/18</p> <p>linked [1] 55/8</p> <p>links [1] 22/6</p> <p>LIOI [2] 1/14 2/5</p> <p>liquid [1] 35/25</p> <p>Lisboa [1] 24/11</p> <p>list [7] 6/5 7/2 7/6 7/11 22/11 48/6 71/17</p> <p>listed [7] 2/25 7/5 15/14 34/8 39/25 45/21 51/5</p> <p>listen [1] 3/5</p> <p>listing [2] 3/8 3/14</p> <p>literally [3] 6/13 13/6 15/3</p> <p>little [5] 31/12 37/18</p>	<p>lottery [3] 14/14 19/16 19/17</p> <p>Louisiana [2] 1/15 19/15</p> <p>love [1] 16/1</p> <p>lunch [1] 10/19</p> <p>M</p> <p>made [4] 9/19 9/19 65/2 66/20</p> <p>main [1] 6/19</p> <p>maintain [1] 4/18</p> <p>make [25] 8/11 8/13 11/20 25/18 25/22 33/20 35/24 38/12 45/22 48/1 48/14 48/14 49/10 52/8 52/8 53/1 53/2 56/9 57/25 63/24 64/4 64/5 65/16 67/24 72/5</p> <p>makes [13] 9/17 10/14 10/16 11/12 12/11 15/7 15/12 20/4 30/15 34/14 34/19 35/9 47/12</p> <p>making [16] 9/12 13/14 20/23 23/3 23/7 37/13 37/15 37/17 39/22 49/18 58/9 60/20 69/5 75/13 75/14 75/18</p> <p>man [1] 8/10</p> <p>manage [1] 61/3</p> <p>managed [1] 24/3</p> <p>management [1] 35/3</p> <p>managing [1] 24/5</p> <p>manipulate [4] 31/3 67/4 68/2 68/22</p> <p>manipulated [3] 70/20 72/5 74/23</p> <p>manipulating [2] 72/12 72/17</p> <p>manipulation [25] 28/22 29/2 29/12 29/13</p>	<p>match [1] 73/2</p> <p>match-up [1] 73/2</p> <p>materialize [3] 26/16 26/19 26/25</p> <p>materially [1] 19/4</p> <p>matter [12] 3/25 15/21 21/7 21/9 30/6 30/7 30/7 31/7 42/18 57/18 77/22 78/5</p> <p>matters [1] 36/22</p> <p>may [17] 1/5 3/3 3/18 5/6 5/8 12/23 12/24 15/9 15/10 19/8 26/24 26/25 35/13 38/4 59/8 69/23 70/3</p> <p>maybe [8] 13/1 26/18 28/20 41/8 65/5 65/9 67/20 68/5</p> <p>me [24] 2/3 2/9 2/14 6/2 12/6 21/16 26/4 33/13 33/20 35/17 36/22 38/6 38/7 43/11 43/19 45/16 45/22 46/7 52/4 52/6 54/20 56/11 58/17 63/9</p> <p>mean [21] 11/10 14/6 16/4 20/23 20/24 21/2 31/17 33/18 35/19 43/7 48/11 48/17 48/17 56/10 58/5 58/20 59/22 66/23 71/23 71/24 76/4</p> <p>meaning [29] 16/13 19/17 26/17 33/24 41/10 41/19 42/2 42/2 42/5 42/8 42/9 43/21</p>	<p>metes [1] 40/3</p> <p>metric [1] 37/5</p> <p>might [21] 10/3 26/6 26/8 26/9 26/14 26/15 26/24 27/14 27/15 27/17 27/23 28/25 30/11 40/4 48/19 52/14 56/19 57/16 58/5 59/19 76/5</p> <p>military [1] 12/18</p> <p>million [2] 71/21 72/1</p> <p>mind [2] 35/9 45/16</p> <p>minimal [1] 69/13</p> <p>minimize [1] 24/9</p> <p>minimizing [1] 24/10</p> <p>minimum [1] 70/4</p> <p>minus [1] 71/5</p> <p>misalignment [1] 70/25</p> <p>mischaracterize [1] 43/5</p> <p>misguided [2] 20/13 29/14</p> <p>misinformation [2] 70/7 74/24</p> <p>misleading [1] 40/12</p> <p>miss [2] 77/13 77/19</p> <p>misses [1] 50/25</p> <p>mission [3] 67/15 69/8 71/1</p> <p>misunderstanding [1] 29/15</p> <p>monetary [1] 65/25</p> <p>money [12] 8/11 8/13 16/21 17/3 30/9 30/13 30/14 35/24 66/7 67/24</p>

M
money... [2] 68/15
 71/25
month [1] 27/23
more [27] 11/23 16/2
 16/11 25/4 25/25 25/25
 27/4 29/13 35/15 36/6
 36/18 37/6 37/15 37/18
 40/16 41/4 42/24 46/8
 48/16 57/1 57/2 62/6
 63/5 63/19 68/4 77/10
 77/16
morning [1] 22/14
most [8] 10/24 11/1
 14/21 18/16 30/5 63/10
 69/19 70/2
mostly [1] 25/17
motion [2] 1/9 75/2
motions [3] 2/12 2/15
 2/20
motivate [1] 66/22
motivates [1] 66/7
move [6] 9/12 14/4
 25/17 53/20 60/14
 61/13
movement [1] 73/10
movements [1] 61/6
moves [1] 61/14
moving [2] 5/25 6/22
Mr. [1] 24/11
Mr. Lisboa [1] 24/11
Ms. [3] 77/2 77/3 77/11
Ms. Franklin [3] 77/2
 77/3 77/11
much [10] 3/6 11/2
 25/16 30/14 37/4 51/15
 57/1 57/2 71/20 77/19
munitions [1] 12/19
murder [2] 7/20 8/9
must [1] 44/6
my [32] 2/7 3/2 4/25
 6/23 8/9 10/19 10/20
 20/12 21/23 22/14
 22/16 26/21 31/15 33/4
 33/5 33/10 34/3 35/13
 37/10 37/25 40/6 40/13
 40/16 43/3 47/1 49/13
 52/5 56/4 65/9 67/2
 69/11 77/3
myself [4] 3/5 4/7
 37/23 59/17

N
N.W [1] 1/21
name [2] 2/7 22/14
narrow [1] 13/7
narrower [2] 16/18
 17/16
narrowly [1] 13/20
National [1] 7/22
nature [1] 66/8
nearby [1] 27/16
necessarily [3] 11/24
 35/12 42/16
necessary [1] 35/24
need [5] 21/22 34/22
 37/4 75/25 76/4
needed [3] 2/24 52/11

53/10
negative [1] 74/17
never [3] 15/25 37/18
 76/17
news [3] 51/8 70/12
 73/7
next [5] 11/20 19/14
 19/17 20/9 24/5
no [21] 1/4 4/21 14/8
 14/8 15/8 18/19 21/22
 21/23 28/7 32/1 32/11
 33/6 33/19 33/19 33/19
 41/4 48/7 51/4 52/24
 58/17 76/25
Nobody [1] 15/22
nominated [1] 20/7
non [1] 34/11
non-public [1] 34/11
none [1] 50/3
noneconomic [2] 25/7
 25/15
nonprofit [1] 25/10
normally [1] 10/23
not [150]
notably [1] 11/18
note [1] 22/22
noted [2] 7/3 61/23
notes [1] 47/1
nothing [2] 18/21
 20/14
noticed [1] 4/13
November [1] 2/23
ново [2] 41/15 76/1
now [13] 7/6 8/20
 15/19 17/19 41/7 41/16
 42/22 42/24 47/23 66/5
 67/1 68/12 68/23
number [15] 7/13 7/14
 7/25 9/10 12/10 14/16
 14/17 14/21 17/3 17/4
 18/10 37/1 55/7 73/22
 73/24
number 1 [1] 7/13
numerous [2] 47/7
 53/16
NW [1] 1/15

O
Obama's [1] 23/23
objective [2] 70/3 70/4
observations [1] 18/4
observed [1] 65/7
observes [1] 11/3
obviously [4] 7/7 28/23
 32/6 32/8
occasion [1] 4/22
occasional [7] 36/19
 36/22 37/4 37/6 62/7
 63/5 63/19
occur [3] 5/16 48/22
 64/2
occurred [1] 70/5
occurrence [1] 43/16
odd [1] 38/25
off [7] 7/2 7/2 7/6 33/9
 45/9 50/9 77/21
offensive [1] 8/12
offer [5] 18/4 18/9 25/2

50/23 51/12
offered [3] 16/17 39/4
 76/16
offering [1] 17/24
offers [1] 76/16
office [3] 1/20 19/8
 27/3
Official [2] 1/24 78/9
offset [1] 35/6
often [2] 5/17 66/8
oh [4] 45/5 69/13 71/5
 72/22
okay [31] 5/22 6/3 6/6
 6/10 6/21 7/16 7/19
 13/10 13/17 13/18 14/3
 16/23 21/1 21/19 21/20
 22/5 22/12 33/12 34/2
 38/3 38/20 40/20 53/23
 54/25 55/25 59/16 60/9
 60/16 65/20 68/17 75/4
one [68] 3/16 4/3 4/10
 4/11 5/3 5/12 5/17 6/7
 6/8 7/3 7/6 7/25 9/10
 11/1 12/11 14/5 14/17
 16/18 16/19 16/24
 16/25 17/3 17/7 17/8
 18/12 23/9 23/17 23/21
 24/7 25/19 26/2 26/2
 27/18 27/18 30/3 31/13
 32/6 36/16 36/24 39/24
 40/25 43/17 43/20
 43/23 45/15 45/16
 45/16 46/10 46/12 48/3
 48/3 49/17 50/18 52/12
 56/1 56/22 58/16 58/17
 59/8 62/23 63/22 64/14
 67/18 68/4 69/5 72/21
 72/23 74/9
ones [2] 30/25 40/5
only [12] 12/11 35/17
 41/1 43/19 49/5 52/17
 53/10 56/12 56/24 65/1
 70/25 76/11
OpenAI [1] 24/20
opening [1] 25/13
operate [1] 61/5
operation [1] 70/17
opponent's [1] 52/5
opposed [3] 30/25
 36/16 62/14
oral [1] 2/13
order [22] 7/15 7/15
 17/21 34/24 35/22
 36/21 38/22 39/2 39/20
 40/3 49/4 49/16 50/16
 50/25 51/7 51/20 56/5
 56/13 61/23 67/8 68/1
 70/2
ordinary [21] 41/19
 41/22 42/2 42/2 53/24
 54/4 54/4 54/7 54/10
 54/12 54/21 56/7 57/6
 57/7 58/10 58/13 59/2
 60/5 60/5 67/15 68/21
organized [1] 66/1
Oscar [1] 76/15
other [53] 4/16 5/5
 11/12 13/22 23/10 24/3

24/12 24/24 26/6 26/12
 27/9 27/15 27/19 27/25
 29/20 30/8 30/23 31/21
 31/23 32/2 32/9 33/16
 33/23 35/13 36/2 36/18
 40/2 40/4 40/4 43/17
 46/7 46/15 46/21 53/4
 56/6 57/16 58/23 59/16
 60/22 61/11 61/16
 64/13 64/22 65/5 67/23
 68/12 69/24 73/10 74/9
 76/3 76/5 76/9 76/13
others [17] 14/18 28/16
 36/7 55/5 55/7 55/14
 55/19 56/8 56/25 57/8
 57/16 59/3 59/11 59/12
 60/7 60/8 75/18
otherwise [5] 3/4 25/24
 48/1 51/23 66/22
our [24] 3/22 6/18 9/11
 12/10 12/23 13/8 14/7
 15/22 15/22 15/23
 21/21 25/13 25/23 30/7
 37/18 37/24 38/25
 54/23 57/11 60/24
 60/24 61/4 68/20 73/16
out [25] 5/10 9/17
 11/23 13/16 20/4 21/11
 24/13 29/18 30/14
 30/17 32/7 34/8 34/18
 35/9 36/2 40/16 44/20
 49/16 60/24 66/24
 67/20 67/20 67/20 76/4
 77/18
outcome [11] 9/6 17/14
 20/17 42/10 53/15 54/8
 57/5 57/15 57/19 67/3
 76/20
outcome-driven [1]
 76/20
outlined [1] 4/13
outside [2] 9/6 67/15
outweigh [1] 74/22
outweighed [2] 65/12
 74/14
over [5] 21/22 52/1
 66/24 73/12 77/5
overlapping [1] 51/24
oversee [1] 67/12
oversees [1] 69/3
overwhelmingly [1]
 65/18
own [3] 15/11 40/6
 51/8
Oxford [1] 17/1

P
p.m [1] 1/5
page [3] 12/1 22/3
 24/14
page 11 [1] 12/1
page 1597 [1] 24/14
pages [5] 25/5 25/13
 27/18 30/1 34/5
paid [2] 4/15 32/7
papers [2] 41/17 59/18
parallel [1] 8/17
pardon [4] 43/11 43/19

45/16 63/9
park [1] 27/16
parse [1] 18/7
part [7] 8/23 16/8 29/6
 32/20 33/22 36/24 69/8
participant [1] 61/7
participating [1] 35/19
particular [9] 4/15 7/22
 32/5 33/17 39/25 57/18
 66/2 66/12 66/15
particularly [6] 26/22
 30/1 30/16 30/19 32/14
 35/14
parties [9] 13/2 36/10
 39/10 43/4 45/2 45/10
 50/8 60/24 77/8
parties' [1] 2/12
partisan [3] 3/9 23/17
 24/17
parts [1] 5/25
party [6] 5/24 26/23
 27/1 28/11 41/9 67/23
party's [2] 41/17 67/18
passed [2] 27/6 65/3
passes [1] 28/7
passing [2] 28/5 28/6
pastry [1] 10/20
pattern [1] 72/25
payout [1] 35/4
people [29] 8/7 8/12
 8/17 10/23 21/8 22/10
 28/25 29/16 30/6 31/8
 34/8 35/23 36/4 49/18
 66/6 66/7 66/15 66/22
 67/4 67/24 68/5 71/17
 71/23 71/24 72/2 74/5
 77/8 77/9 77/18
per [1] 63/24
percent [1] 36/1
perception [2] 74/2
 74/25
perceptions [1] 72/20
perfectly [1] 8/15
period [1] 7/23
permit [1] 51/7
permitted [1] 4/16
person [2] 68/1 77/4
perspective [1] 24/6
ph [1] 50/24
phrasing [1] 55/6
PI [1] 2/17
pick [1] 58/16
piece [11] 4/2 5/22
 6/23 6/25 7/22 21/24
 27/25 28/6 28/22 30/20
 36/5
pieces [1] 27/11
place [10] 4/14 11/14
 30/18 32/5 32/9 32/17
 33/2 34/6 51/16 52/9
places [1] 29/21
plain [10] 4/10 42/5
 42/8 43/20 44/10 45/13
 46/7 57/9 57/15 60/11
plainly [1] 57/14
plaintiff [11] 1/4 1/11
 2/16 3/3 38/1 42/15
 42/22 48/21 49/12

<p>P</p> <p>plaintiff... [2] 55/19 65/1</p> <p>plaintiffs [4] 43/5 43/6 46/18 66/19</p> <p>plant [2] 31/17 31/18</p> <p>platform [2] 39/4 40/1</p> <p>plausible [1] 29/24</p> <p>play [4] 5/7 16/21 17/3 64/22</p> <p>please [4] 6/20 38/7 60/15 77/19</p> <p>plus [2] 20/5 21/15</p> <p>PM [1] 77/24</p> <p>point [33] 3/20 5/23 8/2 9/19 9/20 13/2 13/8 14/2 14/7 14/12 18/19 19/24 23/20 26/1 27/7 27/20 28/9 30/1 30/5 30/14 30/19 31/6 31/13 32/16 33/4 33/6 35/3 38/5 50/6 50/25 60/24 66/23 74/4</p> <p>pointed [1] 30/17</p> <p>pointing [1] 29/18</p> <p>points [5] 23/10 23/20 25/17 37/7 75/9</p> <p>police [1] 31/14</p> <p>policy [6] 20/17 21/3 21/13 22/20 23/24 63/13</p> <p>polycymakers [1] 25/8</p> <p>political [6] 29/18 67/16 69/20 69/24 69/24 72/24</p> <p>politics [1] 18/21</p> <p>poll [3] 71/22 73/4 73/7</p> <p>polls [2] 70/12 73/1</p> <p>pop [1] 73/1</p> <p>portions [1] 42/23</p> <p>pose [1] 74/16</p> <p>position [15] 16/2 16/7 21/21 29/4 32/10 38/15 41/3 41/9 43/6 58/21 69/7 69/9 71/19 71/20 72/1</p> <p>positions [2] 5/13 74/21</p> <p>possibility [2] 30/24 31/9</p> <p>possible [3] 70/8 70/18 74/17</p> <p>post [4] 4/23 5/19 25/18 49/13</p> <p>posting [1] 49/18</p> <p>potential [1] 70/6</p> <p>potentially [2] 36/6 76/14</p> <p>power [5] 19/6 31/17 31/18 62/12 64/18</p> <p>practical [1] 39/23</p> <p>predict [1] 26/7</p> <p>predictable [1] 24/21</p> <p>predictably [1] 63/2</p> <p>predicted [3] 26/15 26/19 71/7</p> <p>predictive [4] 41/5 71/11 74/12 74/17</p>	<p>predominant [1] 36/23</p> <p>predominantly [1] 63/6</p> <p>predominate [1] 62/13</p> <p>predominately [1] 36/18</p> <p>preempt [1] 51/3</p> <p>preempted [1] 51/23</p> <p>preemption [1] 9/2</p> <p>preliminary [3] 2/21 3/2 4/7</p> <p>premised [1] 42/10</p> <p>preparing [1] 10/19</p> <p>presentation [2] 3/5 28/21</p> <p>presented [2] 60/2 60/3</p> <p>presently [1] 66/12</p> <p>president [2] 23/22 27/3</p> <p>presidential [4] 5/19 32/16 57/12 57/12</p> <p>press [1] 22/3</p> <p>presumably [1] 4/23</p> <p>pretty [8] 22/18 23/19 27/18 28/9 28/18 30/16 31/2 31/9</p> <p>prevent [1] 54/17</p> <p>price [19] 36/2 61/1 61/3 61/5 61/6 61/8 61/8 61/11 61/16 61/18 61/22 62/6 62/24 62/25 63/1 68/20 70/11 72/17 73/5</p> <p>prices [3] 28/4 31/20 63/3</p> <p>pricing [2] 61/19 70/9</p> <p>primary [1] 25/18</p> <p>principal [1] 65/24</p> <p>principle [1] 39/9</p> <p>principles [3] 9/2 33/15 34/6</p> <p>prior [2] 2/25 11/19</p> <p>priorities [1] 27/5</p> <p>priority [1] 27/6</p> <p>proactively [1] 24/8</p> <p>probably [4] 15/13 36/22 66/25 68/13</p> <p>problem [4] 11/1 17/19 21/11 36/25</p> <p>problematic [1] 10/24</p> <p>problems [1] 9/10</p> <p>Procedures [1] 40/24</p> <p>proceeded [1] 60/18</p> <p>proceeding [1] 37/15</p> <p>proceedings [3] 1/25 77/24 78/4</p> <p>process [6] 4/18 48/14 69/21 69/25 72/16 76/18</p> <p>produced [1] 1/25</p> <p>product [1] 26/3</p> <p>professor [1] 23/22</p> <p>profit [1] 72/5</p> <p>profiting [3] 8/7 8/12 8/17</p> <p>profound [1] 31/5</p> <p>prohibit [12] 3/14 8/23 9/1 11/4 11/7 12/8 49/8</p>	<p>50/19 51/3 51/14 52/15 71/17</p> <p>prohibited [2] 3/19 60/20</p> <p>prohibition [1] 34/10</p> <p>prohibits [1] 49/17</p> <p>projections [1] 25/2</p> <p>prong [3] 8/22 56/2 56/18</p> <p>prongs [1] 59/8</p> <p>property [5] 16/21 26/6 26/14 26/17 27/13</p> <p>proportion [1] 37/3</p> <p>proposed [12] 39/3 39/13 39/25 52/13 54/7 60/17 61/24 62/9 62/17 71/15 71/21 74/18</p> <p>proposition [2] 23/17 54/23</p> <p>protections [1] 34/8</p> <p>proves [1] 11/2</p> <p>provide [1] 74/11</p> <p>provides [1] 70/4</p> <p>provision [7] 3/13 5/4 5/10 11/23 12/12 33/21 59/13</p> <p>provisions [6] 5/6 8/4 8/24 33/14 33/14 33/25</p> <p>proxy [1] 13/15</p> <p>public [47] 3/19 4/4 4/12 11/16 11/21 22/16 22/20 23/8 25/8 29/5 29/7 29/13 30/20 30/21 30/23 32/11 32/21 32/24 33/1 33/5 34/11 34/23 39/6 39/17 40/18 41/5 42/7 46/23 48/15 49/15 50/2 60/14 60/19 60/25 61/16 61/24 62/1 62/4 63/24 64/4 64/12 64/22 65/13 65/23 68/7 73/25 74/7</p> <p>pull [2] 18/23 18/24</p> <p>pulls [1] 22/3</p> <p>purchasing [1] 50/18</p> <p>pure [1] 31/9</p> <p>purely [1] 15/10</p> <p>purport [1] 40/1</p> <p>purpose [18] 11/13 36/9 45/14 60/21 60/22 61/25 62/4 62/9 62/16 63/6 63/21 63/23 63/24 64/11 64/22 64/25 72/17 72/19</p> <p>purposes [3] 63/10 63/20 64/7</p> <p>put [10] 4/14 19/16 32/5 32/9 49/1 61/4 68/1 69/6 69/9 71/15</p> <p>puts [1] 59/3</p> <p>putting [5] 10/22 65/3 66/6 71/25 72/1</p>	<p>44/3 47/4 52/4 55/16 60/1 65/1 72/11 74/5 76/1 76/6</p> <p>questions [6] 3/4 14/4 21/23 41/7 41/15 76/24</p> <p>quick [4] 22/18 23/13 23/14 75/9</p> <p>quite [1] 7/10</p> <p>R</p> <p>RAAGNEE [2] 1/19 2/9</p> <p>race [3] 14/10 55/21 70/14</p> <p>raises [1] 70/24</p> <p>ran [1] 40/23</p> <p>rate [3] 7/20 8/9 8/10</p> <p>rather [3] 14/19 40/23 63/12</p> <p>rationale [1] 21/13</p> <p>reach [3] 4/22 32/10 38/19</p> <p>reaction [3] 28/25 30/12 35/13</p> <p>read [7] 8/15 8/15 12/2 14/15 48/11 69/4 71/16</p> <p>reading [14] 10/4 10/25 12/21 13/19 33/5 41/18 42/23 48/1 48/10 49/1 49/23 52/14 52/17 75/22</p> <p>real [13] 12/12 15/15 21/7 23/2 31/7 32/1 45/3 45/10 45/12 65/6 66/5 74/15 76/21</p> <p>really [24] 3/25 11/1 12/5 14/7 15/23 18/8 18/10 18/23 19/9 19/18 19/25 20/18 21/14 21/17 25/12 25/14 32/18 37/7 37/9 40/18 63/11 68/25 75/21 76/19</p> <p>reason [5] 32/1 51/11 66/18 68/4 68/5</p> <p>reasonable [6] 53/17 60/10 65/16 65/18 71/2 71/11</p> <p>reasonableness [1] 41/2</p> <p>reasonably [7] 23/6 41/2 41/3 54/3 57/14 62/5 63/2</p> <p>reasoned [1] 23/3</p> <p>reasoning [1] 47/13</p> <p>reasons [4] 17/10 18/9 30/8 75/1</p> <p>rebuttal [1] 75/5</p> <p>received [1] 73/13</p> <p>receives [1] 70/17</p> <p>recognize [1] 77/13</p> <p>recognized [1] 17/19</p> <p>recognizing [1] 74/7</p> <p>record [21] 15/4 23/20 24/12 24/15 24/16 25/5 25/12 25/14 25/23 27/19 28/2 28/8 30/2 31/8 34/4 37/5 54/14 64/1 72/23 72/23 77/21</p>	<p>recorded [1] 1/25</p> <p>records [1] 29/23</p> <p>recycling [1] 24/15</p> <p>refer [7] 9/25 10/5 19/19 19/20 19/21 37/25 38/1</p> <p>reference [2] 16/5 18/15</p> <p>references [1] 21/25</p> <p>refers [3] 7/18 44/6 72/4</p> <p>reflects [1] 73/24</p> <p>refuse [1] 74/20</p> <p>regardless [2] 23/1 66/3</p> <p>regime [1] 51/1</p> <p>registered [1] 50/14</p> <p>regular [1] 69/8</p> <p>regulate [1] 31/18</p> <p>regulated [15] 9/1 9/7 21/9 30/24 34/7 50/14 50/23 51/5 61/13 61/19 67/3 68/20 68/24 70/2 73/19</p> <p>regulates [3] 31/15 31/22 34/7</p> <p>regulation [2] 51/2 75/14</p> <p>regulations [1] 5/6</p> <p>regulator [1] 68/19</p> <p>regulatory [3] 51/24 67/9 71/9</p> <p>reintroduce [1] 37/23</p> <p>reiterating [1] 34/22</p> <p>relate [13] 6/14 6/18 8/20 13/12 13/13 13/13 13/21 16/11 41/19 41/19 42/13 42/25 48/19</p> <p>related [5] 9/13 9/15 35/10 63/11 69/22</p> <p>relates [10] 6/15 7/19 9/8 9/22 12/21 13/22 29/5 42/17 48/23 71/12</p> <p>relating [1] 15/23</p> <p>relationship [2] 43/9 44/12</p> <p>relative [1] 9/17</p> <p>relevant [16] 5/2 5/23 6/1 20/22 23/5 30/19 30/19 32/14 32/18 32/21 33/1 34/18 37/8 41/3 56/11 68/6</p> <p>rely [3] 75/10 75/15 75/16</p> <p>remarks [1] 38/2</p> <p>remotely [1] 29/24</p> <p>removed [2] 6/9 61/7</p> <p>render [2] 42/6 53/19</p> <p>repealed [1] 11/22</p> <p>repeatedly [1] 51/9</p> <p>reply [2] 12/1 12/15</p> <p>reporter [5] 1/23 1/24 23/12 38/4 78/9</p> <p>representation [1] 22/8</p> <p>representations [1] 22/1</p> <p>Representatives [1]</p>
	<p>Q</p> <p>question [24] 3/2 3/10 4/7 28/14 28/15 28/17 28/19 32/4 32/19 32/21 34/25 37/9 40/2 40/22</p>			

<p>R</p> <p>Representatives... [1] 73/14</p> <p>reproduced [1] 3/12</p> <p>require [2] 17/25 58/11</p> <p>required [7] 22/20 32/13 40/9 40/24 41/4 69/9 74/6</p> <p>requires [3] 14/7 41/1 75/13</p> <p>research [3] 24/23 29/22 72/22</p> <p>Researchers [2] 25/8 73/9</p> <p>resolution [1] 2/24</p> <p>resolving [1] 2/14</p> <p>respect [4] 4/14 36/10 38/11 74/8</p> <p>Respectfully [1] 49/3</p> <p>respond [5] 12/14 22/2 25/17 27/7 46/3</p> <p>response [10] 31/15 35/7 45/21 48/9 49/1 65/8 65/9 67/1 67/2 76/14</p> <p>responsive [1] 5/22</p> <p>restrain [2] 3/5 4/6</p> <p>restrictions [1] 5/10</p> <p>result [6] 17/5 19/5 26/18 28/11 30/25 31/25</p> <p>results [1] 19/25</p> <p>retire [1] 77/12</p> <p>retirement [1] 77/18</p> <p>retiring [1] 77/4</p> <p>review [13] 22/23 37/10 37/11 39/22 40/25 41/15 42/7 46/24 48/12 50/3 53/6 57/24 76/18</p> <p>reviewing [1] 42/23</p> <p>rhetorical [1] 73/17</p> <p>RICE [4] 1/13 2/4 6/24 22/15</p> <p>right [37] 3/3 6/20 7/2 8/8 11/12 14/1 15/11 17/8 17/15 20/2 21/9 21/13 26/5 26/11 27/10 29/9 29/10 32/16 32/20 32/23 34/1 34/1 34/9 35/20 37/19 37/21 46/17 46/25 47/20 47/23 50/6 52/20 56/9 57/21 66/8 67/1 72/9</p> <p>risk [12] 24/1 24/2 24/3 24/7 24/10 29/11 29/12 35/3 61/3 61/7 61/9 63/17</p> <p>risks [7] 24/3 24/7 24/20 25/1 25/4 26/2 74/22</p> <p>risky [1] 17/4</p> <p>robotics [1] 24/15</p> <p>robust [3] 10/20 63/20 64/21</p> <p>Rock [1] 73/1</p> <p>role [6] 20/8 32/1 57/23 70/21 70/24 70/25</p>	<p>Roman [4] 11/11 14/3 18/12 21/20</p> <p>room [1] 29/2</p> <p>root [1] 14/22</p> <p>ROTH [2] 1/12 2/2</p> <p>routinely [4] 60/4 69/2 69/10 71/8</p> <p>RPR [2] 1/23 78/9</p> <p>rub [1] 45/12</p> <p>rule [11] 7/4 37/13 37/15 37/17 39/22 58/9 68/25 75/13 75/14 75/14 75/17</p> <p>rule-making [4] 37/13 37/15 37/17 39/22</p> <p>rules [1] 34/6</p> <p>ruling [1] 53/10</p> <p>rumor [4] 67/17 67/19 67/22 68/1</p> <p>rumors [1] 70/12</p> <hr/> <p>S</p> <p>sad [1] 77/11</p> <p>safeguard [1] 33/8</p> <p>safeguards [11] 4/14 4/17 4/22 4/25 32/5 32/9 32/12 32/17 33/2 33/16 33/23</p> <p>safest [1] 68/24</p> <p>said [18] 4/6 6/5 6/16 10/11 18/12 20/2 29/10 45/18 46/20 47/16 49/5 49/15 56/14 59/19 62/20 65/10 66/4 68/19</p> <p>sake [1] 15/11</p> <p>salad [1] 10/20</p> <p>Sam [2] 2/5 24/19</p> <p>same [13] 14/13 17/1 17/10 19/14 30/12 31/19 31/21 35/11 37/9 37/20 38/23 43/21 68/23</p> <p>samples [1] 18/25</p> <p>SAMUEL [1] 1/14</p> <p>sandwich [1] 10/20</p> <p>satisfied [1] 3/15</p> <p>saw [1] 59/17</p> <p>say [51] 2/20 4/10 6/7 6/17 6/19 6/21 9/3 10/5 10/19 10/21 12/1 12/16 13/19 16/5 16/6 16/14 17/25 18/1 18/14 18/16 19/10 19/11 25/16 25/19 36/8 40/12 42/17 45/8 45/13 46/4 46/8 46/20 46/21 46/22 47/8 47/11 47/14 49/9 49/12 52/15 56/23 58/15 59/18 68/23 68/23 69/13 71/11 73/11 73/17 76/11 77/18</p> <p>saying [21] 8/22 10/10 12/20 13/12 18/14 20/20 21/5 32/4 33/21 38/14 42/18 42/24 43/6 46/6 48/5 48/7 50/7 52/24 58/23 59/11 66/9</p> <p>says [13] 3/21 9/20</p>	<p>13/7 24/1 25/23 28/24 54/16 57/21 57/21 57/22 57/22 68/1 71/5</p> <p>SCC [1] 31/20</p> <p>scenario [1] 71/19</p> <p>scheme [1] 33/22</p> <p>scope [7] 3/24 6/18 7/25 11/10 13/8 13/9 43/11</p> <p>scrutiny [1] 11/16</p> <p>se [1] 63/24</p> <p>second [8] 4/2 11/6 14/5 16/22 18/19 39/13 54/6 70/1</p> <p>section [2] 38/22 54/16</p> <p>sections [1] 39/1</p> <p>sector [1] 28/10</p> <p>see [8] 3/13 15/3 26/4 36/9 40/17 42/24 47/16 54/14</p> <p>seem [4] 21/16 29/1 30/16 55/23</p> <p>seems [4] 29/2 35/16 55/23 56/16</p> <p>seen [2] 25/4 25/24</p> <p>sell [1] 36/2</p> <p>selling [2] 9/4 67/24</p> <p>semantically [1] 10/13</p> <p>senate [4] 3/9 28/11 67/19 73/3</p> <p>senator [4] 54/16 62/11 73/2 73/4</p> <p>Senators [4] 14/24 54/14 62/10 73/13</p> <p>sense [15] 9/1 10/14 12/11 14/18 15/7 15/12 20/1 20/4 21/4 21/10 24/16 34/14 34/20 48/1 52/8</p> <p>sensitive [2] 61/14 69/21</p> <p>sensitivity [3] 2/17 2/22 61/6</p> <p>sentence [1] 43/22</p> <p>separate [1] 33/14</p> <p>separately [1] 34/10</p> <p>serious [9] 11/1 18/8 20/18 29/13 30/22 65/12 70/25 73/12 74/22</p> <p>seriously [1] 21/17</p> <p>servicing [1] 24/14</p> <p>set [2] 42/16 52/13</p> <p>sets [3] 4/9 50/1 52/17</p> <p>she [1] 77/12</p> <p>She's [1] 77/4</p> <p>shifts [1] 36/21</p> <p>should [10] 20/11 34/23 39/4 39/6 39/25 45/24 52/2 52/5 58/25 75/2</p> <p>show [1] 56/15</p> <p>showing [2] 29/23 48/15</p> <p>shown [2] 73/1 73/3</p> <p>shows [3] 28/10 37/6 76/14</p> <p>side [5] 26/12 30/23</p>	<p>36/3 41/11 41/11</p> <p>sides [2] 23/8 24/13</p> <p>significance [5] 10/2 15/8 15/18 20/3 20/21</p> <p>significant [4] 25/1 29/6 73/14 74/1</p> <p>similar [4] 5/12 7/5 27/13 75/18</p> <p>similarly [1] 4/23</p> <p>simple [3] 14/7 23/17 69/13</p> <p>simplify [1] 7/2</p> <p>simply [2] 38/1 64/17</p> <p>sing [1] 77/17</p> <p>singer [1] 73/1</p> <p>single [4] 63/12 63/14 64/8 64/17</p> <p>singles [1] 11/23</p> <p>sitting [2] 73/2 73/4</p> <p>six [3] 3/16 3/24 3/24</p> <p>skill [1] 19/6</p> <p>skip [1] 29/9</p> <p>skipping [1] 67/7</p> <p>slide [4] 3/12 11/6 11/20 24/5</p> <p>slides [1] 23/21</p> <p>so [168]</p> <p>social [4] 67/17 67/17 68/1 73/6</p> <p>societally [1] 74/12</p> <p>software [1] 24/13</p> <p>soil [1] 45/4</p> <p>solicit [1] 40/7</p> <p>some [45] 2/22 3/4 4/13 7/19 8/23 12/7 12/9 16/5 18/15 19/8 19/25 21/6 21/10 22/23 23/2 25/24 27/8 27/19 27/24 27/24 28/9 29/7 29/12 29/16 30/11 30/23 33/16 34/4 35/22 37/3 37/13 38/5 42/21 46/15 47/14 48/21 48/22 52/8 66/23 67/6 68/5 68/14 70/4 71/25 75/18</p> <p>somebody [1] 8/10</p> <p>somebody's [1] 20/7</p> <p>somehow [1] 29/21</p> <p>someone [5] 4/23 31/3 36/1 66/24 72/4</p> <p>something [28] 9/5 11/8 12/21 13/15 15/8 15/9 16/22 17/13 21/9 31/12 35/1 36/23 38/8 40/12 45/5 48/24 55/4 55/7 55/14 55/25 56/8 56/25 56/25 57/4 57/8 57/15 65/9 68/11</p> <p>sometimes [1] 38/25</p> <p>song [1] 77/17</p> <p>sorry [4] 13/1 33/18 47/21 77/9</p> <p>sort [33] 5/10 6/11 7/1 7/6 8/2 8/14 9/4 9/16 9/17 9/24 10/16 11/18 12/11 13/13 13/14 17/6 17/8 17/11 17/22 17/24</p>	<p>18/6 20/15 20/16 21/12 23/9 24/16 28/16 29/11 31/6 31/10 36/16 38/25 76/19</p> <p>sound [1] 69/8</p> <p>sounded [1] 69/5</p> <p>sounds [2] 36/22 56/19</p> <p>SPAN [1] 15/1</p> <p>speak [10] 5/8 10/23 12/19 13/6 23/14 28/22 29/4 42/20 43/2 44/24</p> <p>speaking [5] 6/22 6/24 10/17 20/3 48/16</p> <p>specific [5] 20/22 30/22 34/8 48/22 65/21</p> <p>specifically [5] 24/11 34/13 38/12 66/9 73/22</p> <p>specifically-enumerate d [1] 34/13</p> <p>speculation [2] 31/10 35/23</p> <p>speculative [1] 62/14</p> <p>speech [1] 69/24</p> <p>speed [1] 19/6</p> <p>spending [1] 30/12</p> <p>spent [2] 30/9 37/2</p> <p>spins [2] 67/19 67/20</p> <p>split [2] 27/4 27/4</p> <p>sport [2] 15/10 15/20</p> <p>squad [2] 14/12 74/23</p> <p>squeeze [1] 20/16</p> <p>Stacy [4] 1/23 78/3 78/8 78/9</p> <p>staff [2] 4/16 32/7</p> <p>stake [3] 16/22 55/4 57/8</p> <p>stakes [1] 45/22</p> <p>staking [9] 9/5 11/8 17/13 55/6 55/14 56/8 56/25 57/4 57/15</p> <p>stand [3] 8/24 9/17 24/13</p> <p>stand-alone [1] 8/24</p> <p>standard [10] 22/22 22/25 23/2 23/5 36/25 37/10 37/14 37/20 39/22 40/24</p> <p>start [5] 3/3 22/22 29/18 38/9 60/22</p> <p>started [1] 38/5</p> <p>starting [4] 7/17 23/10 27/12 29/12</p> <p>state [46] 8/25 9/7 18/24 39/16 41/14 45/19 45/23 46/3 46/6 46/21 46/21 47/6 47/7 47/8 47/11 47/16 48/8 48/10 48/17 48/18 49/7 49/10 49/17 50/10 50/12 50/23 51/3 51/4 51/10 51/13 51/19 51/21 51/22 51/23 52/3 52/8 52/15 52/25 53/2 53/5 53/16 53/18 54/5 55/2 55/3 60/12</p> <p>stated [1] 63/16</p> <p>states [11] 1/1 1/10 8/23 11/4 12/7 12/9</p>
--	---	---	---	---

<p>S</p> <p>states... [5] 45/21 51/14 55/7 73/22 73/24</p> <p>Stating [1] 64/16</p> <p>statue [1] 36/14</p> <p>statute [64] 3/21 4/9 7/15 8/2 9/22 9/25 10/9 10/11 10/15 11/19 17/16 19/10 19/12 20/17 28/24 32/11 33/17 38/18 39/12 40/4 41/10 41/13 41/25 42/1 42/4 42/6 42/11 43/11 43/19 43/20 43/24 44/5 44/11 44/15 45/13 47/19 47/25 48/11 48/13 49/21 49/24 50/1 50/20 52/7 52/15 52/17 53/19 54/2 55/13 56/10 57/21 57/22 57/24 58/18 59/13 59/15 60/11 60/18 60/25 61/25 73/23 75/25 76/2 76/22</p> <p>statutes [4] 8/24 18/24 19/23 38/25</p> <p>statutory [28] 3/12 4/1 5/3 6/22 11/18 14/6 18/8 22/17 22/19 30/20 32/19 32/21 32/23 33/10 33/21 33/23 34/19 38/23 38/25 41/7 41/15 43/10 43/13 51/1 58/19 75/24 76/7 76/20</p> <p>stems [1] 29/15</p> <p>stenography [1] 1/25</p> <p>step [11] 4/8 6/8 18/3 18/5 43/12 43/12 43/17 43/20 43/23 44/1 48/12</p> <p>steps [3] 6/17 63/14 64/10</p> <p>STERLING [2] 1/14 2/4</p> <p>sticks [1] 32/6</p> <p>still [5] 6/7 13/11 22/20 34/23 75/21</p> <p>stock [3] 28/3 31/20 65/5</p> <p>stolen [1] 7/23</p> <p>stop [3] 26/11 47/10 48/6</p> <p>stories [1] 22/11</p> <p>story [1] 25/14</p> <p>strained [1] 18/17</p> <p>strange [4] 10/16 20/6 28/15 31/12</p> <p>streamline [1] 48/13</p> <p>Street [1] 1/21</p> <p>stretch [1] 19/18</p> <p>strike [1] 7/10</p> <p>structure [1] 10/3</p> <p>stuff [2] 26/6 34/4</p> <p>STUKES [3] 1/18 2/8 37/23</p> <p>subissues [1] 60/14</p> <p>subject [7] 11/15 42/18 48/12 48/23 49/4 50/2 68/14</p> <p>subjected [1] 76/17</p>	<p>submit [4] 39/6 41/12 44/10 57/6</p> <p>submits [1] 75/1</p> <p>submitted [1] 72/23</p> <p>subsection [3] 48/3 48/4 53/19</p> <p>subset [1] 16/9</p> <p>substance [1] 39/19</p> <p>subtle [1] 14/1</p> <p>subvert [1] 52/3</p> <p>such [4] 33/7 45/23 70/10 74/14</p> <p>sudden [1] 31/18</p> <p>suffer [1] 64/3</p> <p>sufficient [2] 47/8 56/6</p> <p>suggest [1] 50/4</p> <p>suggested [3] 31/13 63/9 63/11</p> <p>suggesting [2] 58/7 58/8</p> <p>summary [2] 2/12 75/2</p> <p>Super [2] 14/12 14/12</p> <p>superfluous [1] 11/13</p> <p>support [2] 18/19 23/20</p> <p>supported [2] 54/13 65/22</p> <p>supporting [1] 31/10</p> <p>supports [1] 41/11</p> <p>suppose [1] 19/8</p> <p>Supreme [2] 54/22 76/6</p> <p>sure [13] 5/5 12/2 12/24 13/2 16/7 23/2 25/20 26/24 33/20 38/10 47/3 56/9 60/15</p> <p>surge [1] 73/6</p> <p>surged [1] 28/10</p> <p>surveys [1] 71/24</p> <p>swallowing [1] 12/13</p> <p>swap [1] 43/14</p> <p>sweep [4] 8/18 46/23 75/22 76/13</p> <p>sweeps [1] 21/14</p> <p>swept [1] 20/9</p> <p>Swift [1] 20/8</p> <p>synonymous [4] 16/9 54/12 54/21 60/6</p>	<p>14/20 19/1 19/23 22/10 26/23 27/13 38/23 40/13 42/5 47/24</p> <p>talks [2] 19/15 72/21</p> <p>tangible [1] 65/6</p> <p>tasked [3] 67/10 67/11 68/12</p> <p>Taylor [1] 20/8</p> <p>technically [1] 13/14</p> <p>teeth [1] 23/2</p> <p>tell [2] 25/14 41/9</p> <p>tells [1] 11/17</p> <p>temperature [2] 27/22 35/10</p> <p>temperature-related [1] 35/10</p> <p>tenable [1] 12/3</p> <p>term [9] 20/19 41/23 41/23 41/24 42/1 46/9 53/23 53/24 54/1</p> <p>terms [8] 16/11 39/23 47/24 50/2 54/24 55/8 56/10 66/6</p> <p>terrorism [4] 7/8 8/3 8/5 13/13</p> <p>terrorist [2] 8/13 64/2</p> <p>test [9] 36/9 36/10 62/4 62/7 62/8 63/4 63/7 64/16 64/19</p> <p>tethered [1] 13/9</p> <p>text [4] 3/12 8/1 14/21 18/24</p> <p>than [18] 14/19 32/2 36/7 36/19 36/23 37/6 37/19 40/2 40/4 44/3 46/2 46/7 57/1 57/2 62/6 63/5 63/19 76/13</p> <p>thank [10] 2/20 3/6 22/13 37/21 38/6 75/4 75/20 76/25 77/19 77/23</p> <p>thanks [1] 77/14</p> <p>that [564]</p> <p>that's [86]</p> <p>their [29] 8/24 12/1 12/4 12/20 19/3 23/1 24/7 27/7 27/10 30/7 36/9 42/13 42/23 45/20 47/25 48/9 50/3 50/6 53/13 61/5 61/7 61/25 64/12 65/2 66/10 71/25 72/15 75/22 76/12</p> <p>theirs [1] 12/25</p> <p>them [14] 7/2 7/10 7/14 10/22 11/7 15/16 15/23 19/1 21/13 30/3 45/21 51/8 53/19 65/2</p> <p>themselves [1] 23/6</p> <p>then [28] 3/17 4/2 4/11 6/7 7/7 7/14 9/7 11/22 12/8 16/25 17/14 18/1 19/24 20/1 21/3 21/15 21/21 24/19 25/7 27/24 29/22 32/8 32/25 47/14 57/24 58/4 59/12 67/25</p> <p>theoretically [1] 45/25</p> <p>theorized [1] 73/9</p> <p>theory [2] 75/22 76/22</p>	<p>there [77] 2/16 2/21 5/5 5/9 5/15 6/4 8/12 9/12 11/3 12/6 14/16 14/18 16/4 17/6 18/2 19/8 21/5 21/25 22/23 24/12 25/7 26/11 26/16 26/17 26/19 26/25 27/2 27/14 28/2 28/18 28/24 29/9 30/15 31/2 32/8 32/11 32/17 33/13 34/10 34/16 35/1 35/12 36/4 36/8 37/6 37/10 37/12 37/15 37/16 41/7 42/21 44/21 45/21 46/21 47/10 55/18 55/22 58/6 58/15 58/16 58/24 59/7 59/16 63/20 64/9 65/10 66/21 66/23 68/12 68/16 69/12 69/18 72/8 72/11 72/22 72/25 77/7</p> <p>there's [51] 2/17 4/21 5/25 11/7 13/8 14/8 14/8 14/13 16/17 16/18 16/18 18/19 20/1 21/3 21/22 23/19 24/13 24/15 24/24 25/3 25/4 26/3 27/18 28/1 29/2 29/11 29/20 29/22 30/8 30/11 30/22 30/23 31/10 31/11 31/23 31/24 32/1 33/23 34/4 42/1 54/22 63/25 68/3 68/15 68/21 69/21 71/13 71/13 74/9 77/10 77/17</p> <p>therefore [6] 5/4 6/18 9/8 38/19 49/11 60/19</p> <p>these [102]</p> <p>they [71] 7/9 7/15 8/19 9/1 9/3 9/25 10/1 10/1 11/20 12/1 12/4 12/16 12/18 13/19 14/5 14/14 15/4 15/15 15/21 15/22 16/5 17/19 17/23 17/25 18/1 18/14 18/23 19/4 19/23 21/12 22/20 23/4 23/5 23/8 24/22 25/17 25/18 25/19 25/20 26/9 26/21 30/6 30/7 30/7 31/7 33/15 42/24 45/8 45/21 52/19 53/7 53/15 56/23 61/4 61/5 62/20 64/23 66/14 66/20 67/17 71/24 72/4 72/18 74/11 75/10 75/14 75/15 75/16 75/17 75/19 76/17</p> <p>they're [34] 7/5 8/6 8/6 8/22 9/3 9/12 9/14 10/2 12/6 12/20 15/5 15/19 15/20 15/20 17/22 17/24 18/22 19/1 21/8 24/21 25/21 27/21 30/4 34/18 42/18 43/6 44/17 48/2 48/5 50/7 53/14 54/23 61/8 71/25</p> <p>thing [14] 2/19 10/5 14/13 15/17 19/14</p>	<p>31/21 48/3 54/15 64/14 67/7 68/8 68/15 72/21 76/11</p> <p>things [17] 8/6 8/6 8/7 8/8 10/22 21/16 24/24 27/16 29/3 29/17 32/16 34/18 36/16 46/4 55/23 66/23 67/8</p> <p>think [112]</p> <p>thinking [3] 10/18 21/5 66/5</p> <p>Third [2] 18/22 39/15</p> <p>this [162]</p> <p>THOMPSON [2] 1/13 2/4</p> <p>those [40] 3/24 3/24 4/3 4/17 4/22 4/25 7/23 7/24 8/6 8/25 9/4 10/22 13/21 18/25 20/9 21/16 23/7 23/10 24/21 25/3 25/17 26/7 29/7 29/21 32/12 32/16 34/18 35/17 37/7 39/5 42/23 42/25 50/3 54/7 59/8 60/14 65/12 76/16 76/17 76/17</p> <p>though [4] 5/18 6/8 6/16 6/19</p> <p>thought [12] 2/13 4/17 15/12 25/13 26/24 28/8 35/2 35/6 42/20 55/21 66/20 76/15</p> <p>threat [2] 55/3 55/5</p> <p>threat [3] 74/1 74/2 74/15</p> <p>threats [1] 74/6</p> <p>three [6] 7/10 9/11 10/9 15/4 59/8 75/9</p> <p>through [6] 14/3 16/14 18/3 35/16 53/11 70/4</p> <p>throughout [2] 9/24 10/8</p> <p>thus [1] 59/23</p> <p>tie [1] 16/12</p> <p>tied [5] 2/22 16/24 16/25 17/7 35/4</p> <p>time [18] 2/17 2/21 2/22 7/23 23/15 27/2 27/2 30/3 30/5 38/6 41/25 47/3 58/18 69/15 74/4 75/8 76/17 77/1</p> <p>times [1] 16/4</p> <p>tip [2] 25/12 67/25</p> <p>tips [1] 70/17</p> <p>today [6] 25/24 37/25 38/3 39/10 65/3 66/21</p> <p>together [6] 10/9 10/22 15/16 21/16 63/16 72/1</p> <p>ton [1] 23/19</p> <p>too [14] 11/2 13/7 13/20 15/7 18/6 23/14 25/22 26/6 31/13 34/5 45/6 45/9 64/13 77/20</p> <p>tools [1] 34/17</p> <p>topic [1] 40/19</p> <p>totally [1] 70/3</p> <p>tourism [3] 26/14 27/15 27/17</p>
<p>T</p> <p>table [2] 2/4 2/9</p> <p>take [11] 7/14 16/23 17/4 18/5 23/10 23/15 24/19 30/2 38/4 47/3 77/22</p> <p>takeaway [1] 20/15</p> <p>takeover [1] 28/11</p> <p>takes [2] 14/3 21/20</p> <p>taking [3] 7/2 58/21 63/16</p> <p>talk [15] 19/4 22/15 34/5 53/20 53/21 53/22 54/6 56/5 57/11 60/13 64/23 64/24 67/6 67/8 71/14</p> <p>talked [4] 17/10 36/17 60/12 65/2</p> <p>talking [12] 5/14 14/17</p>				

T

tourists [1] 26/7
trace [2] 26/18 27/1
track [1] 59/17
trade [6] 4/16 5/9 32/8 34/9 50/13 71/16
traded [2] 66/13 71/20
trading [22] 1/6 1/20 2/8 9/1 9/8 9/14 10/5 14/20 27/9 34/11 34/17 37/24 48/18 51/3 60/20 61/21 63/17 65/11 71/18 71/21 73/6 73/18
transacting [3] 45/14 45/17 46/2
transaction [7] 9/24 10/11 43/14 44/9 44/13 45/25 63/3
transactions [4] 9/20 9/21 10/4 44/2
transcript [2] 1/9 1/25
transcription [2] 1/25 78/4
treat [1] 20/5
treated [2] 17/12 20/11
treating [2] 19/18 21/4
trial [3] 19/5 19/12 19/12
tried [1] 31/4
tries [1] 27/20
triplet [1] 9/24
trolled [1] 73/7
true [5] 17/1 27/22 35/21 65/15 69/15
try [8] 3/4 6/2 12/4 20/12 22/18 30/6 30/13 31/8
trying [11] 2/18 12/6 18/10 18/14 20/24 20/25 21/18 23/13 25/17 36/9 56/9
turn [5] 3/9 21/22 23/10 31/20 37/17
turns [2] 67/20 67/20
two [30] 3/15 3/22 4/8 5/15 5/24 5/25 7/10 7/12 14/21 16/17 17/2 17/4 17/6 23/10 25/17 25/18 36/10 36/16 37/3 37/7 38/18 43/12 44/1 46/4 48/12 59/8 60/17 60/25 69/12 69/18
two-candidate [1] 5/25
two-party [1] 5/24
two-step [3] 4/8 43/12 48/12
tying [2] 15/16 21/16
type [3] 15/14 45/22 57/24
types [3] 9/25 55/22 57/17
typical [1] 40/7
typically [2] 2/13 68/16

U

U.S [1] 45/4
U.S.C [1] 38/24
Ukrainian [1] 12/18

ultimate [1] 63/13
Ultimately [1] 37/14
unambiguous [3] 41/10 48/2 58/25
unambiguously [1] 44/5
uncertain [2] 11/8 17/13
under [44] 4/20 4/25 5/18 12/20 33/4 38/22 39/2 39/16 40/24 41/4 41/14 43/20 44/22 45/19 45/23 46/5 47/6 47/16 48/7 48/16 48/18 49/2 49/16 49/16 49/21 50/23 51/10 51/21 51/22 52/12 53/16 53/18 55/2 56/1 56/18 57/24 59/10 60/12 60/17 67/10 67/11 73/20 74/19 77/22
underlying [34] 6/13 6/14 7/19 9/13 9/15 12/17 12/22 13/7 13/23 14/8 14/13 14/14 14/19 21/3 31/16 31/22 42/9 42/12 42/19 43/1 43/7 43/15 43/18 43/21 43/24 44/3 44/6 44/15 44/16 44/23 46/1 46/10 48/20 73/19
undermine [3] 50/13 51/19 74/24
underscores [1] 76/19
understand [28] 2/18 4/8 7/18 8/22 9/3 9/23 12/6 14/15 16/3 16/7 17/21 17/23 20/18 21/2 24/9 25/18 29/6 32/9 33/20 37/10 42/15 43/4 43/6 47/25 48/25 56/10 56/11 75/25
understanding [6] 4/25 16/10 17/7 26/21 34/4 43/3
understood [2] 5/12 26/12
undertake [1] 57/24
unduly [1] 72/13
unenviable [1] 41/9
unifying [1] 21/12
UNITED [2] 1/1 1/10
universe [1] 58/12
unlawful [37] 7/13 7/17 7/19 7/23 8/19 8/20 9/8 10/25 11/11 12/7 12/9 13/12 14/4 32/25 39/16 41/14 45/19 45/23 46/5 46/21 46/22 47/12 47/17 48/16 48/18 48/24 49/11 51/22 52/16 53/1 53/3 53/16 53/18 55/10 60/12 75/21 76/10
unless [6] 14/3 34/21 53/20 60/13 64/24 76/23
unlike [2] 9/10 35/3

unlikely [3] 30/16 59/25 66/19
unpack [1] 30/3
unpredictable [1] 62/24
unreasonable [1] 47/21
unregulated [2] 29/19 30/25
unsavory [1] 29/3
untrue [1] 67/20
unusual [8] 10/16 35/8 35/14 37/16 40/11 40/11 49/23 52/14
up [17] 8/15 10/15 14/18 18/24 20/10 21/14 31/11 34/22 39/1 60/1 61/9 61/10 67/19 67/23 68/13 71/21 73/2
upcoming [1] 32/15
upon [8] 43/15 43/15 43/15 43/15 43/21 44/15 44/19 61/19 71/7
us [7] 11/17 14/3 17/16 22/11 22/19 77/8 77/20
use [6] 45/4 58/24 61/2 62/13 62/14 62/21
used [15] 10/8 16/4 44/5 52/3 55/5 61/21 61/21 62/6 62/24 63/2 63/10 63/18 64/2 73/10 74/24
users [1] 73/6
uses [6] 37/1 37/3 37/6 43/21 43/22 63/11
using [5] 8/9 13/20 24/3 25/21 54/17
usual [1] 52/17
utility [2] 64/20 74/21

V

vacate [1] 34/23
validity [1] 74/5
valuable [2] 25/11 74/13
valuations [1] 28/4
value [14] 9/5 11/8 15/15 17/13 55/4 55/7 55/14 56/8 56/25 57/5 57/8 57/15 61/10 74/9
variables [1] 27/3
variety [1] 76/8
various [2] 16/3 55/2
vast [2] 70/6 70/8
Vegas [1] 51/17
vein [1] 5/12
version [3] 19/3 19/15 21/14
versus [1] 37/13
very [20] 7/9 18/12 18/18 18/25 20/5 27/13 28/23 65/12 66/10 68/3 70/24 72/15 74/14 74/22 75/6 75/6 75/6 75/9 75/9 77/1
VI [1] 18/12
view [6] 15/23 29/6 55/18 59/10 59/12

73/24
VII [1] 18/12
violate [2] 9/7 46/3
violates [3] 48/8 48/10 59/13
voila [1] 18/1
volume [1] 73/6
vote [6] 66/1 66/7 66/12 66/15 72/5 72/7
votes [4] 29/17 71/17 71/24 72/3
voting [1] 66/14
vs [1] 1/5

W

wager [6] 46/22 49/20 52/9 54/8 55/12 57/18
wagering [30] 19/5 46/14 46/16 47/5 47/7 47/9 47/12 47/16 48/8 48/9 49/10 49/11 49/18 50/11 52/15 53/1 53/3 53/14 53/15 53/16 55/8 55/12 55/13 56/19 56/24 59/2 59/13 59/19 60/7 73/25
waiting [1] 77/16
walk [1] 18/3
want [25] 8/10 8/16 8/16 15/14 21/8 22/2 23/13 28/21 33/9 36/8 38/6 39/20 40/12 45/5 46/4 48/25 49/13 52/21 52/22 52/22 53/20 56/3 59/9 64/14 72/21
wanted [7] 13/16 35/7 47/23 65/8 71/14 77/13 77/18
wants [3] 14/25 60/13 61/7
war [15] 7/8 8/3 8/5 12/16 12/17 12/21 12/22 13/13 44/19 44/23 44/24 45/1 45/1 45/7 45/7
was [73] 2/13 2/19 2/19 2/20 3/2 4/4 4/6 6/4 6/11 6/17 6/21 6/22 8/13 10/12 10/18 10/18 11/22 13/1 13/5 15/1 16/15 18/10 20/25 22/21 22/23 23/13 26/19 32/4 33/13 35/2 35/7 35/25 35/25 37/12 38/13 38/16 39/7 39/24 41/4 42/21 47/8 47/12 48/11 48/13 48/13 48/15 48/21 50/21 53/9 53/17 56/6 60/3 60/3 60/8 62/7 63/21 65/8 65/16 66/4 67/8 67/22 68/16 69/5 71/2 71/10 72/8 72/11 72/25 73/1 73/3 75/23 76/14 76/15 57/17 56/6 60/3 60/3 60/8 62/7 63/21 65/8 65/16 66/4 67/8 67/22 68/16 69/5 71/2 71/10 72/8 72/11 72/25 73/1 73/3 75/23 76/14 76/15
Washington [3] 1/7 1/16 1/21
wasn't [6] 15/3 38/15 53/7 53/9 55/21 60/1

watch [1] 14/25
waterfront [2] 11/24 17/14
way [36] 6/2 7/18 8/15 9/2 9/25 10/3 10/5 10/15 10/16 10/22 10/23 11/2 14/16 14/25 16/11 18/11 18/17 20/16 26/3 26/19 27/25 28/1 29/16 30/11 31/3 31/19 35/4 35/11 35/12 37/2 48/2 51/11 66/12 66/23 66/24 67/14
ways [5] 17/7 23/25 27/21 66/15 68/21
we [67] 2/11 2/20 2/23 3/7 3/23 4/2 6/15 7/1 7/6 7/10 7/18 8/6 8/15 8/16 8/16 11/6 11/19 11/20 12/24 13/24 13/25 14/17 15/14 17/10 18/2 18/3 18/24 19/19 19/19 21/2 21/8 22/17 25/23 32/22 32/23 33/2 34/5 36/12 36/15 36/17 37/7 37/24 38/4 39/6 40/14 43/10 44/10 46/5 46/18 47/6 47/10 47/16 52/20 54/14 54/22 57/6 57/11 58/16 61/4 66/16 67/12 69/15 70/1 75/25 77/2 77/17 77/18
we're [21] 10/10 20/24 23/7 26/22 30/21 42/5 43/24 44/14 45/9 47/18 47/24 49/20 50/9 51/11 67/7 67/9 67/10 67/11 77/12 77/16 77/19
we've [6] 3/11 11/6 11/7 18/24 24/5 60/12
weapons [1] 45/4
wear [1] 20/8
weather [2] 20/7 27/16
website [2] 22/2 51/8
Webster [1] 16/20
weeds [1] 45/6
week [1] 20/9
weeks [2] 67/19 67/22
weigh [1] 64/12
weight [1] 74/1
weird [2] 10/22 20/10
well [20] 7/11 9/3 12/20 17/25 21/5 21/7 32/7 32/17 35/13 42/13 46/20 48/7 52/4 52/5 52/21 54/5 60/21 66/17 68/1 74/2
went [3] 16/14 52/11 53/10
were [24] 4/17 14/17 18/14 28/17 31/3 32/9 37/16 39/5 40/5 42/21 42/24 48/10 50/17 57/17 63/11 63/20 65/12 65/23 66/23 69/5 73/6 73/12 77/1 77/7
what [112]

<p>W</p> <p>what's [7] 15/16 17/9 30/21 40/23 52/6 55/1 59/6</p> <p>whatever [5] 26/15 26/16 26/24 48/22 58/22</p> <p>when [26] 6/25 10/1 13/19 16/14 18/5 18/25 19/16 20/20 28/16 32/4 40/22 41/25 42/1 42/5 42/17 43/10 48/13 51/7 51/9 51/19 51/25 54/14 62/3 67/25 69/4 73/18</p> <p>whenever [1] 76/6</p> <p>where [23] 2/14 7/18 9/20 10/12 13/2 17/25 18/22 26/22 30/18 33/16 34/16 36/15 38/25 42/12 44/23 47/1 48/23 50/9 54/15 60/6 68/14 73/22 74/5</p> <p>whereas [1] 16/12</p> <p>wherever [1] 19/6</p> <p>whether [39] 3/10 5/3 5/5 7/20 7/22 9/13 9/15 12/18 20/7 30/22 37/1 37/8 39/24 43/10 44/1 44/3 44/19 47/5 48/21 49/13 51/20 51/22 51/25 53/7 56/5 57/23 57/25 58/2 58/10 59/17 59/18 62/5 62/9 64/1 70/5 70/19 72/7 72/8 72/11</p> <p>which [40] 3/19 5/10 6/11 6/12 7/13 7/15 12/16 14/5 14/25 17/1 17/17 18/15 18/15 19/4 23/17 27/21 28/10 29/13 30/11 32/23 35/12 35/17 36/24 37/7 37/17 40/23 42/9 43/21 47/5 48/12 48/18 54/7 55/11 56/4 60/4 61/16 62/11 65/10 70/21 76/15</p> <p>while [1] 56/12</p> <p>WHITFORD [1] 1/18</p> <p>who [14] 5/17 19/8 24/6 27/1 33/10 35/17 35/23 36/4 61/7 63/16 65/4 67/18 71/16 71/17</p> <p>who's [8] 2/16 5/9 14/9 14/11 23/22 24/19 27/3 76/14</p> <p>whoever [1] 35/1</p> <p>whole [4] 11/4 11/13 25/25 35/16</p> <p>whose [7] 35/1 42/9 42/12 46/10 46/12 49/6 61/10</p> <p>why [9] 12/4 20/13 30/4 31/8 38/14 40/17 49/25 75/10 75/22</p> <p>wide [1] 76/8</p> <p>will [21] 3/3 3/4 12/18 16/14 21/22 26/16</p>	<p>29/16 35/1 37/6 39/10 44/19 45/3 45/3 45/6 49/14 61/9 61/9 61/10 61/13 64/2 75/8</p> <p>willing [1] 36/1</p> <p>win [5] 14/10 14/11 66/2 66/4 76/15</p> <p>wind [1] 77/20</p> <p>wish [1] 40/14</p> <p>within [19] 3/24 4/3 5/3 6/18 7/23 7/25 11/10 38/13 38/18 41/1 53/18 53/25 54/7 54/8 55/5 56/7 58/10 58/13 60/5</p> <p>without [6] 4/24 12/12 12/16 28/5 40/13 76/21</p> <p>won't [1] 15/1</p> <p>word [15] 13/20 14/22 18/13 18/22 20/14 20/16 21/7 21/17 24/9 39/11 41/18 42/7 44/10 48/2 62/23</p> <p>words [3] 16/4 43/17 61/11</p> <p>work [8] 9/21 10/20 12/12 17/10 17/23 21/15 27/25 49/22</p> <p>worked [1] 11/19</p> <p>workers [2] 24/1 71/23</p> <p>works [5] 10/15 26/3 28/1 35/11 75/25</p> <p>world [1] 45/3</p> <p>worried [1] 61/8</p> <p>worry [2] 32/1 75/23</p> <p>worst [1] 26/15</p> <p>worth [1] 38/2</p> <p>would [87]</p> <p>wouldn't [7] 5/2 19/11 19/19 32/10 33/5 69/8 71/17</p> <p>wow [1] 29/1</p> <p>wrap [1] 34/22</p> <p>writing [1] 15/2</p> <p>wrong [4] 11/17 23/4 27/11 30/4</p> <hr/> <p>Y</p> <p>yeah [3] 5/8 55/17 56/20</p> <p>years [3] 62/2 77/5 77/11</p> <p>yes [11] 5/21 10/21 42/18 45/8 45/18 57/6 59/15 60/15 75/7 75/12 75/17</p> <p>you [150]</p> <p>you'd [1] 58/24</p> <p>you'll [1] 3/13</p> <p>you're [30] 9/5 10/4 13/11 13/19 13/21 20/20 20/23 27/10 27/13 28/20 29/10 30/21 32/7 32/20 32/25 33/21 37/19 44/22 48/6 58/6 58/22 58/23 59/10 61/14 64/3 66/5 66/9 69/9 69/14 71/22</p> <p>you've [6] 16/24 17/14</p>	<p>25/4 25/24 42/16 65/9</p> <p>your [76] 2/2 2/7 3/5 3/6 3/7 4/8 4/13 4/17 4/20 4/24 4/25 5/13 5/18 5/23 7/3 12/15 13/1 13/5 14/3 14/25 16/2 16/7 21/23 22/1 22/13 22/14 23/15 25/10 25/21 26/15 28/14 28/19 28/21 29/4 30/16 32/3 32/5 32/10 33/4 34/21 35/7 37/5 37/12 37/22 38/2 39/21 40/15 40/22 41/8 45/20 46/17 47/3 47/22 48/25 49/1 53/12 55/18 57/23 59/12 60/13 61/13 61/14 62/19 64/24 65/8 67/1 68/18 69/4 69/8 69/11 71/14 75/2 75/9 76/12 76/23 77/1</p> <hr/> <p>Z</p> <p>zone [2] 41/2 47/18</p>		
--	--	---	--	--