

July 24, 2023

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment on KalshiEX LLC's Congressional Control Contracts

Dear Chair Behnam,

We are writing in response to the Commodity Futures Trading Commission's ("CFTC") review of KalshiEX, LLC's ("Kalshi") Congressional control event contracts (the "[Proposal](#)") and [request](#) for public comment. We, the undersigned individuals and organizations, believe the proposal may incentivize election interference and illegitimately impact the outcome of elections, and want to bring to your attention our very serious concerns, including that such contracts would be decidedly contrary to the public interest and damaging to our Democracy. Additionally, we question the appropriateness of a financial regulatory agency making such a far-reaching, momentous decision: whether or not gambling on U.S. elections should nor should not occur and under what circumstances, regulation and policing.

First, as you know, the CFTC regulates derivatives and commodities (like wheat, oil, gas, soybeans, and cattle) that are vital to all Americans. Properly regulating and policing those markets ensures that commodities in the right amounts at the right times and prices reasonably reflective of supply and demand are available to the American people, from their cereal at breakfast to the bread in their lunch sandwiches and the gas in their cars and trucks to get to school, work, and the grocery store. That has nothing to do with gaming, gambling, or elections, which is why the CFTC has no experience, expertise, or mandate to legalize, authorize or police gambling on elections across the U.S. (or to overrule the state and federal laws regulating gaming and gambling not to mention elections). Given the importance of the mission of the CFTC to the daily lives of all Americans, the agency should not take on responsibilities far beyond its mandate which will inevitably impair its ability to fulfill its vital role.

Second, we understand the Proposal seeks CFTC consent to allow Kalshi to offer de facto betting contracts on the outcome of elections in the United States via so-called "event contracts." While Kalshi's Proposal is nominally limited to the change in partisan control of Congress, we would anticipate that, if allowed, Kalshi and others would quickly offer similar contracts on all sorts of elections from the local level to the presidency. Thus, the Proposal, if approved or otherwise allowed to go into effect, would almost certainly usher in widespread betting on elections throughout America.

Legalizing gambling on U.S. elections would be a dramatic policy change with potentially grave national implications. The consequences of gambling on elections are far-reaching and alarming. Given the already documented [use and abuse of social media in the](#)

[gambling space](#) and [artificial intelligence \(AI\) in the political space](#), allowing gambling on U.S. elections will invite if not incentivize more interference, abuse, and misconduct as gamblers seek to effect political outcomes to maximize their winnings. Given the current environment where many Americans already question the integrity of U.S. elections, this would be adding fuel to the fire at the worst possible time.

Allowing gambling on elections would create very powerful incentives for bad actors, or even those just looking to make a quick buck, to interfere with our elections and try to sway voters outside of the democratic process. False and misleading AI deepfake videos are already being used to deceive voters and effect elections, as Bloomberg reported on July 12, 2023 in an article entitled: "[AI is making politics easier, cheaper and more dangerous.](#)" Allowing betting on elections will incentivize such election interference, likely leading to an epidemic of deepfakes and similar AI-enabled misconduct.

Third, the criteria for evaluating the Proposal, the Commodity Exchange Act ("CEA") Section 5c(c)(5)(C)(i), prohibits event contracts that involve (1) terrorism, (2) assassination, (3) war, (4) gaming, or (5) an activity that is unlawful under any State or Federal law. The legislative history of CEA Section 5c(c)(5)(C) indicates that CFTC should consider whether the event contract *as a whole* involves activities listed under Section 5c(c)(5)(C)(i), meaning that the CFTC should consider, among other things, the event underlying the contract, in this case elections, and the purpose of the contract, betting on elections. Moreover, the CFTC broadened the scope of Section 5c(c)(5)(C)(i) through the adoption of Regulation 40.11(a)(1), which now prohibits not only an event contract that "involves" the five enumerated activities but also one that "relates to, or references" them.

Additionally, because not all undesirable contracts may fall neatly within the specific categories listed, CFTC adopted a regulation, 40.11(a)(2), that prohibits event contracts involving an activity that is "similar to" the activities enumerated above, so long as the CFTC determines the contract to be "contrary to the public interest." That makes sense given the types of contracts that may "involve, relate to, or reference" the enumerated items. For example, betting via event contracts on where the next school shooting will be or how many school children will be murdered in the next school shooting are not enumerated and therefore it could be argued not expressly prohibited. However, few would doubt that such betting should be prohibited because such a contract would "involve, relate to, or reference" assassination. Additionally, the event underlying such a contract would be "similar to" assassination and thereby prohibited as contrary to the public interest. Regarding the Proposal, in addition to being unlawful under a number of state and federal laws and prohibited gaming (either directly or because it "involves" and "relates to" gaming), it should also be prohibited because it is similar to gaming and therefore should be rejected as contrary to the public interest.

Finally, America's democracy, once strong and resilient, now stands on a precipice, teetering under the weight of doubt and uncertainty fed by disinformation campaigns and outright lies. The integrity and validity of our elections, the very cornerstone of our democratic process, are being called into question by an increasing number of Americans. The chilling assault on the Capitol on January 6, 2021, represents the pinnacle of this crisis, but it is far from being an isolated incident. Quietly, beneath the glare of the national spotlight, there are countless

other lesser-known instances across the country that erode our citizens' trust in our electoral system and, ultimately, democracy itself.

This is why it is in the public interest to have elections that remain untainted by any form of manipulation or misconduct, while also prohibiting activities that might encourage individuals to interfere with elections. Put differently, gambling on elections and potentially incentivizing election interference are decidedly not in the public interest and for that reason alone the Proposal should be rejected. In short, at a time of reduced confidence in elections and increased concerns about election integrity, allowing gambling on the outcome of elections would be contrary to the public interest and we urge the CFTC to deny the Proposal.

Sincerely,

Action Center on Race and the Economy
Americans for Financial Reform Education Fund
Better Markets
Clean Elections Texas
Congregation of Sisters of St. Agnes
End Citizens United//Let America Vote
Get Money Out -- Maryland
Indivisible Northampton-Swing Left Western MA
Institute for Agriculture and Trade Policy
Interfaith Center on Corporate Responsibility
Missionary Oblates
National Disability Rights Network (NDRN)
NETWORK Lobby for Catholic Social Justice
Oxfam America
People Power United
Progressive Change Institute
Public Citizen
Revolving Door Project
San Bernardino County Democratic Party
School Sisters of Notre Dame, Cooperative Investment Fund
Seventh Generation Interfaith Coalition for Responsible Investment
Sisters of St. Francis of Oldenburg
Take on Wall Street
WV Citizen Action

Individual Signers:

Jacoba Dolloff
Janet Perlman
Jennifer Taub, Western New England University School of Law
John Chevedden
Madeline Shapiro
Paula Katz
Toni Hunter

CC: The Honorable Kristin N. Johnson, Commissioner
The Honorable Christy Goldsmith Romero, Commissioner
The Honorable Summer K. Mersinger, Commissioner
The Honorable Caroline D. Pham, Commissioner