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Gambling and the Law®:

Why Congress and the Courts Should, But Won't, Outlaw Futures Prediction Markets

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Futures prediction markets have recently gotten a lot of attention. And not in a good way.

On July 8, 2026, the Southern District of New York denied Kalshi's attempt to prevent the state of New York from enforcing its gambling laws against the big prediction market company. In the important decision, the federal judge in Manhattan ruled protecting the people of New York from compulsive gambling, endangering sports integrity and a proliferation of unregulated contracts, heavily outweighed Kalshi's interests in ensuring the primacy of federal law. Significantly, Judge Analisa Torres ruled, preliminarily, that state gambling laws do apply.

Two days earlier, a Michigan state court granted the Michigan Gaming Control Board's request for a temporary restraining order ("TRO") against KalshiEX, LLC, with a daily fine of $120,000 if Kalshi does not immediately cease all sports betting activities in Michigan. Kalshi had previously failed to get a federal court to enjoin the state action. One of the main arguments that seems to have swayed the state judge was Kalshi accepting patrons under 21 years old, the minimum age to place bets with state-licensed bookmakers.

Days before Trump began his war against Iran, one or more insiders who knew his top-secret military plans opened accounts on the other big operator, Polymarket, and placed $529 million in winning trades, betting on the exact day that air-strikes would begin.

But there is a bigger problem, which so far has gotten little attention: Kalshi has refused to pay $54 million to traders who won their bets that Iranian leader

Ayatollah Ali Khamenei would leave office before March 1, 2026. The winners' class action lawsuit alleges that Kalshi continued to take bets on February 28th, even as reports spread throughout the world of U.S-Israeli air-strikes on the Iranian leaders. Kalshi asserts that it had a rule that "leaving office" does not include the Ayatollah being killed. A bizarre claim to make, given that his being killed was one of the most likely outcomes.

Kalshi has given back the winners' original bets.

Gamblers will put up with a game if it's the only game in town, even when they know the game is rigged so that insiders will win. What they won't put up with is when no one is winning.

So, why is Kalshi risking its reputation? Why won't Kalshi pay winners?

If you believed the prediction market companies, this problem shouldn't exist. Kalshi should have no interest in whether any bet is won or lost.

One of the most important arguments that prediction markets make is that they are not at all like bookies. These are contracts only between individuals, they claim, which the markets simply facilitate. They assert that there can only be a bet on a future event occurring if there is somebody on the other side who is putting up money that the event will not occur.

This is not true.

The people who won the $529 million bet on when the war would begin sometimes put up as little as ten cents to win a dollar. Were there really people willing to bet as much as 90 cents, to win only a dollar, that Trump would not start a war with Iran? Does anyone believe that gamblers put up more than $400 million, on 1 to 9 odds, no less, that Donald Trump would not bomb Iran?

So, who would lose if Kalshi must pay winners? In a Massachusetts case, the judge found that "Kalshi had an affiliated entity that places buy and sell orders, ensuring that both yes and no contracts can be purchased for any given event at all times."

So Kalshi would have to pay winners out of its own pockets, just like a bookie. Kalshi probably uses an affiliated entity to make its wagers for itself, so that when those bets lose big time, as now, the affiliate alone can declare bankruptcy.

The online commodities industry likes to say it is merely providing a platform for individuals to bet against each other. It may be a platform, but it is also a market, with market makers. Kalshi's affiliate does exactly what a market maker is supposed to do: put up the money when there is nobody to take the other side of a trade. Of course, market makers are required to pay winners.

Futures prediction markets assert they are commodities markets, no different than other futures markets, such as those on the future price of corn or oil. Kalshi and Polymarket make contracts on other future events, including elections, sports and wars. States, especially those with state-licensed gambling like Nevada, say that betting on who will win a football game makes them no different than sports books.

First, it is important to clear up one general misconception. Whether Kalshi, Polymarket and their smaller competitors are gambling has almost nothing to do with whether they are legal. Traders in all commodities markets put up money on future uncertain events in the hope of making a profit: consideration, chance and prize are the dictionary definition of gambling. But many forms of gambling are legal, including state lotteries, licensed bookies and commodities markets.

The current confusion over futures prediction markets on sports, elections and wars, starts with society's historic antipathy toward gambling. State legislatures have outlawed most forms of gambling from the beginning. This included activities that looked like gambling, including insurance, auctions and securities and commodities markets.

Commodities markets serve a useful purpose for society. Both the farmer, who is planting, and the commercial baker, who will buy the crop after it is harvested, need to protect themselves from unexpected forces like bad weather causing wild swings in the price of wheat. The existence of markets allows the risk to be transferred to gamblers, politely called speculators. The US Supreme Court understood this, and for decades created legal fictions to get around state anti-gambling statutes, which clearly outlawed speculation on commodities. This included pretending that speculators intended to accept delivery of the commodity. The minimum size for one contract of pork bellies was 38,000 pounds. Imagine the fun of having 19 tons of raw bacon delivered to your front door.

The Depression finally forced Congress to act. In 1932, 1933 and 1936, Congress passed laws to regulate trading in securities and commodities. Naturally, commodities were given to the Agricultural Committees, which still today have jurisdiction. Congress enacted the Commodities Exchange Act (“CEA”), codified under United States Code Title 7 "Agriculture."[1] Congress amended the CEA in 1974 to create the Commodities Futures Trading Commission ("CFTC") and to give the CFTC exclusive jurisdiction over trades on regulated "contract markets," preempting all state gambling laws.[2]

Congress later expanded the allowed trades to include baskets of stocks, naively believing that no one would be able to buy or sell enough shares in all the companies that make up the Standard and Poor's 500 to influence the prices of futures contracts on the S&P 500. They might be excused because instantaneous computer trading had not yet been developed. But the market crash of 1987 should have warned Congress and federal regulators of the dangers of allowing even more exotic trades, including bundles of subprime mortgages.

The existence of federal preemption laws does not mean that every contract for a future event is legal. To be exempt from all state anti-gambling laws trades must meet specified criteria. The most important is that the trades take place on a federally regulated exchange, known as Designated Contract Markets ("DCMs"). Only DCMs can offer event contracts. Bizarrely, the CEA allows companies like Kalshi to self-declare that they are commodities markets before being approved by the CFTC.

The CEA sets out both general and specific grounds for the CFTC to disapprove contracts on future events. The most important one for companies like Kalshi and Polymarket is the list added to the CEA in 2010 by the Dodd-Frank Act.[3]

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[1] "Commodity" is still defined as "wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles," except for onions and the later-added "motion picture box office receipts." 7 USC § 1a(9).

[2] 7 U.S.C. § 2(a)(1)(A). In a two to one decision the Third Circuit Court of Appeals went even further in holding, preliminarily, a general federal preemption. *Kalshiex, Llc. v. Flaherty*, 172 F.4th 220 (3rd Cir. 2026). The Dissent points out that the "Majority's preemption analysis fails to adequately consider the presumption against preemption, which applies with special force here because gambling has traditionally been regulated by the states." (Justice Roth Dissent).

[3] "Dodd-Frank Wall Street Reform and Consumer Protection Act," P.L. 111-203, 124 Stat. 1376.

The Dodd-Frank Act added the Special Rule for future events contracts.[4] Congress expressly told the CFTC that it may disallow any event contract from being traded if it is contrary to the public interest. The Special Rule is clear with its intent, starting with a list of five specific activities:

> In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a [traditional] commodity . . .), the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve-
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> (I) activity that is unlawful under any Federal or State law;
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> (II) terrorism;
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> (III) assassination;
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> (IV) war;
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> (V) gaming; or
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> (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

Kalshi self-declared itself to be a commodity and won its first case, which involved a contract on which party would control Congress after the 2024 election. The CFTC ruled that these contracts could not be traded because they involved gaming and an activity, betting on election results, which was unlawful under state laws. Kalshi sued the CFTC. US District Court Judge Jia M. Cobb granted Kalshi's motion for summary judgment, meaning without trial she decided that the CFTC was arbitrary and capricious in finding Kalshi's Congressional Control contracts were contrary to the public interest.[5] The decision was never officially reported. The CFTC decided not to appeal, after Donald Trump, Jr., became a paid advisor to Kalshi and his father, the President, appointed a member of Kalshi's Board to be the CFTC Chair.

Judge Cobb reached some surprising conclusions, which have been rarely

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[4] 7 U.S.C. § 7a-2(c)(5)(c).

[5] *Kalshiex v. Commodity Futures Trading Comm'n.,* 2024 WL 4164694 (D.C.D.C. 2023).

followed by other courts. She ruled that the CFTC could only look at whether a contract was contrary to the public interest if it involved one of the six enumerated activities of the Special Rule. She ruled that "gaming" requires playing a game and did not mean "gambling." To reach this conclusion she had to dismiss Congress's use of the word gaming in the Indian Gaming Regulatory Act, where she bizarrely includes sports betting, a form of "Class III gaming," as playing a game. The Court never mentions the nearly uniformly used of gaming as a euphemism for gambling, as in the American Gaming Association, *Gaming & Wagering Business* trade journal and International Association of Gaming Regulators. More states follow Nevada's lead – Nevada Gaming Control Board and Gaming Commission – than call their regulatory bodies "gambling" agencies.[6]

Judge Cobb also found that betting on election results, even though admittedly unlawful under many state laws, could not be used as a basis for applying the Special Rule, because those states also outlawed betting on other future events. This would somehow mean all commodities trades violated state laws. Therefore, she concluded that only contracts on illegal games fall under the Special Rule. And the CFTC could not even look at whether betting on which party would control Congress was contrary to the public interest.

There is some debate about whether an event contract must still be found to affirmatively serve a public purpose, such as allowing farmers and bakers to hedge against changes in the price of wheat. Sports futures markets have had difficulty coming up with who needs protection from a particular team winning or losing a football match, or the coin flip at the Superbowl. But despite Judge Cobb's decision, it seems clear that Congress intended the CFTC to normally declare the listed activities as being against the public interest.

A quick search on Westlaw lists more than 50 cases involving Kalshi, including civil suits by states and tribes to enjoin its activities, class actions, appeals of administrative decisions and even criminal charges being fought on all levels of state and federal courts. Most of these involve the companies, Kalshi and Polymarket, by

[6] National Indian Gaming Commission and Association,, North American Gaming Regulators Association, and other regulatory bodies in Alaska, Arizona, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Virginia, and Wisconsin.

far the two biggest operators in the US. The CFTC has sued at least ten states for wanting to regulate, or outlaw, prediction markets.

Some of the cases involve individuals. A US special forces soldier involved in the planning of Donald Trump's incursion into Venezuela was charged with using classified information to win more than $400,000. Others are being investigated for insider trading.

Filing criminal charges would normally be the most effective way for a state to stop prediction markets. When New York charged DraftKings and FanDuel with illegal gambling, on top of a dozen civil court actions in other states, the two daily fantasy sports giants almost went bankrupt lobbying to have the law changed.

States have the power to not only charge the operators with illegal gambling, but they can also go after everyone who helps in any way. Because futures markets assert that they are not gambling, operators set the minimum age at 18. Attorneys general and gaming regulators have included allegations of exploiting children in states where the minimum age to place a bet is 21. Under the doctrine of aiding and abetting, advertisers, payment processors and others can be charged with illegal gambling, the same as if they took the bets themselves. They can also be charged with the separate felony of conspiracy. And most states have racketeering statutes modeled after the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), expressly designed to go after investors and others who don't want to get their hands dirty.

Arizona has filed felony charges against Kalshi for illegal gambling, including taking bets from 18-year-olds. Once a crime has been charged, the defendant almost always loses the right to ask a civil court to enjoin the state or otherwise interfere. That is what happened in Arizona. But then the federal CFTC entered the fray, and in a decision that was probably incorrect, a federal judge temporarily, at least, halted the state prosecution.

Tribes have also become involved. They have the strongest legal arguments. When two laws are in conflict, courts look at which is more recent and more specific. No court could conclude that the general CEA, passed in 1936, was designed to overrule the specific Indian Gaming Regulatory Act passed in 1988. The danger for states is that the tribes win, but courts rule that prediction markets are only prohibited from taking bets from Indian lands.

Federal regulators and prosecutors already have difficulty preventing existing commodities from being traded corruptly. One of the most startling trades in recent years occurred literally five minutes before Trump announced peace talks with Iran. One or more individuals, apparently in the White House, bought $1.5 billion in S&P 500 futures and sold $192 million in oil futures. Five minutes later, Trump made the televised public announcement and the stock market soared while oil prices plummeted 15%.

There are, of course, laws against insider trading and market manipulation. These normally do not apply to the president and vice president. But other officials can be prosecuted.

Insider trading is not only unfair, but also dangerous. As I write this, Polymarket is selling contracts on “Will the U.S. invade Iran before 2027?” YES for 20 cents and NO for 81 cents to win $1.00. Total volume is $41,381,670. Do you think Iran might notice if $529 million were suddenly put on YES?

It is important to understand that some insider trading is not a flaw but a characteristic of futures markets.

Knowing the outcome before you make a bet might be distasteful, but relatively harmless, greed, when you're talking about who will win Oscars for best movie, best actor, etc. Nevada regulators prohibit its state-licensed sports books from taking bets on the Academy Awards, because they know someone puts the names in those envelopes that are opened during the TV show. Kalshi and Polymarket allow such bets, with a cutoff time a few days before the Oscars are announced publicly. But there does appear to be some suspicious increase in the dollars going into contracts for the eventual winners, hours before those winners are officially revealed.

Kalshi recently announced its first two public enforcement actions against insider trading. An editor of YouTube star MrBeast allegedly used his knowledge of unaired show content to place bets. It seems obvious, but prediction markets should not be allowed to take bets on events that have already occurred but have not yet been broadcast.

Do event futures meet the tests to be traded on federally regulated exchanges, and thus exempt from all state gambling laws? Legally, the first question, as always, is who decides? Some courts have allowed Kalshi to continue its business, ruling, at least preliminarily, that the question of whether its futures contracts are commodities must be first decided by the CFTC. Other courts have rejected that argument, preliminarily finding Congress did not intend federal preemption of the fundamental question of whether a trade falls under the federal statutes.

Although the legal arguments can appear convoluted, they all come down to a single question: When Congress passed the various commodities acts, did it intend to allow something that looks like sports betting to be exempt from all state gambling laws?

The answer is actually easy: of course not. Public policy toward gambling is always set by the states, not the federal government. That is why Utah and Nevada can share a border and have such completely different laws about gambling. Under their police power, states have almost unlimited freedom to decide how they want to handle gambling. That is why there are so few gambling statutes that are federal. When Congress has been forced to act, such as with the Interstate Horseracing Act, the Indian Gaming Regulatory Act, and the Unlawful Internet Gambling Enforcement Act, it expressly lets the states decide. The recent explosion in legal sports betting was the direct result of the US Supreme Court overturning the Professional and Amateur Sports Protection Act ("PASPA"), ruling that Congress cannot tell states what forms of gambling they must permit or prohibit.

There is even better evidence when it comes to bets on wars. In July 2003, Congress forced the Pentagon's Defense Advanced Research Projects Agency ("DARPA") to eliminate its proposed futures market on political and economic events in the Middle East. US Senators were worried, not only about the ethical concerns, but also that markets would incentivize acts of violence.

There has been one prior attempt to create a futures market on sports events and wagers. On December 15, 2020, the CFTC received a self-certification filed by ErisX for what it called "RSBIX NFL Futures Contracts."[7] This was indisputably sports betting: the event contracts were based on National Football League ("NFL") games which would track the moneyline, point spread, and total points sports bets offered by sports bookmakers; the stated purpose was to help bookies (legal state-licensed ones) hedge their bets. ErisX withdrew its application on the last day of the 90-day review period when it became clear the CFTC would disallow these admittedly sports betting contracts. The CFTC stated the contracts were "gaming." It also did not like trading

[7] See text and footnotes in Federal Register, Vol. 91, No. 113, p. 35816, June 12, 2026.

in the contracts being limited to sports bookmakers and not open to the general public. As Commissioner Dan M. Berkovitz put it in his detailed analysis of these proposed trades in sports wagers, ". . . based upon the gaming provision and the general purposes of the CEA, it would be contrary to the public interest to permit the listing of contracts involving gaming that do not have an economic purpose."[8] He seemed particularly put off because the bookies would be buying the sports bets on the commodities market and selling them to patrons in casinos. One of the prime purposes of commodities markets is to allow the general public to determine the prices of whatever was being traded through a free market. The economic purpose of only helping bookmakers hedge their bets was insufficient. Commissioner Berkovitz seemed inclined to permit these contracts if they had been available to the general public. Surprisingly, the current CFTC did not mention Berkovitz's statements that there would have been a public purpose if the sports betting contracts were made available to the general public.

So, what is the future of these futures markets? States rely on the tax revenue they receive from their licensed sports books. The American Gaming Association estimates that prediction markets have reduced state taxes in the last year by more than $1 billion. States probably do have the power to tax prediction market operators and their customers; although courts have ruled that the power to tax does not include the power to destroy through outrageously large taxes. The Kentucky, Illinois and now North Carolina Legislatures have decided to go the if-you-can't-beat-them approach: they are instituting state taxes on prediction markets. State taxation and regulation give the general public the impression that these markets are not only legal but have consumer protections in place, which they do not have.

North Carolina lawmakers have gone the furthest, becoming the first state to tax prediction markets without requiring licensing or regulation. And the tax rate is just 6% of net transaction fee revenue, while they are raising the tax on licensed sports books from 18% to 23% of gross revenue. The goal appears to be to attract market operators to move to the Tar Heel State.

Most of the proposed legal action is in opposition. Prediction markets are losing public support, as can be seen by the names given the bills filed in Congress to

[8] "Statement of Commissioner Dan M. Berkovitz Related to Review of ErisX Certification of NFL Futures Contracts," (April 7, 2021), https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement040721#_ftn55.

restrict them. A Republican joined Democratic Senators in sponsoring the "Prediction Markets Are Gambling Act," which would prohibit platforms regulated by the CFTC from taking sports bets. The "Public Integrity in Financial Prediction Markets Act," would outlaw insider trading by government officials. The "End Prediction Market Corruption Act" would prevent federal officials from making trades in areas where they can make their bets come true.

Politicians can read the public will. More than a dozen state legislatures are also considering restrictive laws; Minnesota is the first state to expressly make these futures prediction markets a felony. California Governor Gavin Newsom signed an executive order banning appointed state officials with insider information from betting on prediction markets. The US Senate has voted to prohibit Senators and their staff from betting on prediction markets; but House Speaker Mike Johnson, R-La., has refused to allow bans on insider trading by House members and staff to come up for a vote.

The wild card is the Trump factor. On January 11, 2025, after his father was elected president, Donald J. Trump, Jr., announced that he has become a paid strategic adviser to Kalshi. His venture capital firm, 1789 Capital, then invested at least $10 million in Kalshi's only large direct competitor, Polymarket, and Trump, Jr., joined Polymarket's advisory board. President Trump appointed a new head of the CFTC, Brian Quintenz, who was a member of the Board of Kalshi. Eliezer Mishory, the company's top lawyer, quit Kalshi to lead the Department of Government Efficiency, DOGE, at the federal Securities and Exchange Commission. (Trump withdrew Quintenz's name, when the appointment was opposed by major Trump donors Tyler and Cameron Winklevoss.)

Trump then appointed Michael Selig, Kalshi's outside lawyer, as chairman of the CFTC. The stated mission of the CFTC is "to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation." Selig immediately announced that the CFTC had exclusive jurisdiction over commodities markets, including in determining whether event futures were commodities. He started filing amicus briefs, always on the side of Kalshi, and suing at least ten states that asserted that Kalshi was violating state gambling laws. He has not taken any action against Trump, Jr., for being so heavily involved in the two largest and direct competitors in the field.

It is important to note that when suits are filed against states in the name of the federal government of the United States and its CFTC, the legal actions are the result of the actions of a single individual, Michael Selig. The law requires the CFTC to have five members with staggered five-year terms, no more than three from any one political party, approved by the U.S. Senate. But Trump has appointed only one person to the CFTC, Michael Selig. Selig is not only the Chair, but he is also the only member of the Commission. So, all the action taken in the name of the United States occurred after a vote of 1 to 0 by the CFTC. This is how the votes are reported in the Federal Register, "In this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative." There are no other Commissioners.

The CFTC's proposed rules consistently use the phrase "The Commission believes. . . " Congress intended there to be diverse views on issues coming before the CFTC, that it was not to represent the interests and beliefs of a single political party, let alone a single individual. The CEA requires the President to appoint five commissioners, not just one. And they must represent diverse viewpoints:

> In nominating persons for appointment, the President shall--
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> (i) select persons who shall each have demonstrated knowledge in futures trading or its regulation . . . ; and
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> (ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.[9]

Legally, everything that Selig has done in the name of the Commission is suspect.

The CFTC under Selig has proposed rules to govern its procedures and standards in evaluating whether events futures are contrary to the public interest. Not surprisingly, the rules would allow his former client, Kalshi, to continue business as usual.[10] The focus is on explaining why Kalshi's futures markets on college and professional sports events are not contrary to the public interest. Comments on the proposed rulemaking are due July 27, 2026.

Since there is no chance that the CFTC will put significant limits on futures prediction markets, are there other legal mechanisms to resolve the issue of whether

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[9] 7 U.S.C. § 2(a)(2)(A).

[10] "A Proposed Rule by the Commodity Futures Trading Commission on 03/16/2026", 2026-05105 (91 FR 12516); "Prediction Markets; Public Interest Determinations," https://www.govinfo.gov/content/pkg/FR-2026-06-12/pdf/2026-11854.pdf (June 12, 2026).

state gambling laws apply?

Even if a bill limiting or outlawing event futures could pass both houses of Congress, Trump would undoubtedly veto such a bill, and there are not enough votes in either house to override a veto. The only way the dispute can be ended, before Trump leaves office, is for the Supreme Court to rule prediction markets are, or are not, commodities.

All the court decisions so far are temporary restraining orders ("TROs") and preliminary injunctions. The current Court, headed by John Roberts, has overturned lower court preliminary decisions the vast majority of the times a lower court has found the Trump administration was acting illegally. In fact, Trump has filed and won more of these emergency writs in his first year than were filed in the 16 years under Obama and George W. Bush. The Republican majority on the Court does not allow full briefs or oral arguments; it often does not even state its reasons. This "shadow docket" does not create any legal precedent, because the lower court orders were only preliminary. But it allows Trump to continue to do whatever he wants, for years.

There is a chance the Roberts Court might decide to take the case. Judges are also human. Increasingly, lower courts are rejecting the argument that trades on which team will win a football match is a commodity. As was shown by their rejection of Trump's Executive Orders setting tariffs and attempting to eliminate birthright citizenship, even the Republican dominated US Supreme Court will rule against Trump when the law is clear and the public is incensed. And Roberts knows gambling. When he was in private practice he wrote an amicus brief to the Supreme Court on behalf of the American Gaming Association, the casino trade group, on casinos' right to advertise.

Most likely, the Roberts' Court will dodge the issue and allow lower court decisions to stand. The argument will be that this will allow the various federal courts of appeal to have time to be fully briefed and examine all aspects of the supposedly complicated legal questions. But this will also mean that for years futures prediction markets without state gambling licenses, which is all of them, will not be allowed to operate in some states, while other states will be under court order to allow this unregulated sports betting.

I believe that once Trump is gone, the Supreme Court will rule that the prediction markets are illegal, not only because they are, but also to protect states like Utah from being forced to have sports betting and states like Nevada being forced to have unregulated sports betting. Proponents of states' rights, especially the right of states to make their own decisions about gambling, will once again prevail.

What will the future look like if I am wrong and these futures markets win? Statutes and regulations, including consumer protections, that apply to state-licensed gambling do not apply. The minimum age to make a contract is 18, to make a casino or sports bet it's 21. Bettors who win big have to pay taxes and are reported to the IRS on forms W-2G and 1099 and tax is often withheld. Big investors are also supposed to pay taxes, but trades are not usually reported, nor are taxes withheld. The Bank Secrecy Act requires large and suspicious cash transactions reported to the US Treasury. Futures trades, especially those made with bitcoins, are not reported.

States like Nevada have spent years and millions of dollars developing expertise in policing sports betting. Operators and owners must pay for their own extensive background checks, including being fingerprinted. State regulators track all investments and all money in and out of licensed sports books. They have set up systems to detect large anomalous bets and other indications of match-fixing. They often require sports books to install special mechanisms to prevent underage betting and to protect compulsive gamblers, including self-exclusions.

The NFL sent letters to Kalshi and Polymarket telling them to stop allowing contracts on "manipulable" events. Specifically, the League opposed bets where a single individual could change the outcome, as with field goals; they don't want wagers on events that can be known in advance, as in who will be appearing with Bad Bunny in the Super Bowl halftime show; they want prediction markets to ban results related to officiating; and, they oppose inherently objectionable events, like injuries.

Futures prediction markets have none of these safeguards. Kalshi and Polymarket allow bets on events that have already taken place, but are not yet broadcast. They prohibit individuals who can make bets come true, but have no way of enforcing these prohibitions.[11]

A prime example of the weakness of CFTC's proposed regulations to allow sports events futures and to give the CFTC exclusive jurisdiction is its request for comments on how the CFTC should police the actual sports events as well as the futures contracts. The CFTC has no expertise or experience in regulating sports

[11] In mid-July 2026, the Securities and Exchange Commission announced, again as it did in April 2026, that it will join in co-regulating event markets. The SEC, like the CFTC, has no expertise or even experience in regulating sports betting.

betting.

The CFTC cannot even decide whether it is in the business of regulating gambling. It asked for comments on the following:

> What aspects of responsible gaming standards, such as self-exclusion programs, monetary or time limits, or advertising limits, disclaimers, or warnings, should the Commission consider in its public interest determination?[12]

The most interesting question is how far can technology take prediction markets? I expect it will not be long before horse races join sports events as the subject of futures contracts. Betting on horse races also shows what is possible. You can now place bets on gaming devices that are indistinguishable from slot machines. Historic Horse Racing machines allow players to bet on past races, with the results shown on spinning reels. Linked video bingo machines and video lottery terminals also allow bettors to press buttons and play a new game every three seconds.

Because prediction markets are not gambling these gaming devices could be placed in bars, gas stations, convenience stores, and coffee shops. And amusement arcades. Even zoning laws might not apply; Nevada places limits on convenience gambling, what they call restricted licenses, including location and limiting true slot machines to 15. Because restricted licenses are part of Nevada's Gaming Statutes, they cannot be used to restrict commodities trading authorized by federal law.

The federal Wire Act prevents cross-border sports betting. If prediction markets succeed in being ruled to be merely commodities, they can take bets from everywhere. And there is nothing to stop them from offering games that play exactly like slot machines based on real-world events on everyone's home computers and cell phones.

So, in five or ten years these futures prediction markets will either be outlawed, or the country will be awash in unlicensed and unregulated "commodities" trading.

END

[12] "A Proposed Rule by the Commodity Futures Trading Commission on 03/16/2026," "Questions and Request for Comment" ¶ 19, 2026-05105 (91 FR 12516), https://www.federalregister.gov/documents/2026/03/16/2026-05105/prediction-markets

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Harvard Law School educated, Prof. Rose is a consultant to governments and industry. He has testified as an expert witness in administrative, civil and criminal cases and international arbitrations throughout the US, in Canada, Australia, New Zealand and France. Prof. Rose has acted as a consultant to major law firms, international corporations, licensed casinos, tribes and local, state and national governments, including the provinces of British Columbia, Ontario and Québec, the District of Columbia, the states of Arizona, California, Delaware, Florida, Illinois, Michigan, New Jersey, New Mexico, Texas, New South Wales, the national governments of the Czech Republic and Lao People's Democratic Republic (Laos), and the federal governments of Canada, Mexico and the United States.

With the rising interest in gambling throughout the world, Prof. Rose has addressed such diverse groups as the National Conference of State Legislatures, Congress of State Lotteries of Europe, U.S.-China Commission, U.S. Senate Indian Affairs Committee, and the National Academy of Sciences. He has taught classes on gaming law to the F.B.I.; at universities in Spain, France, Slovenia and China; and as a Visiting Scholar for the University of Nevada-Reno's Institute for the Study of Gambling and Commercial Gaming. Prof. Rose has presented scholarly papers on gambling in Nevada, New Jersey, Puerto Rico, Canada, England, Australia, Antigua, Portugal, Italy, Argentina and the Czech Republic.

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