

Public Statements & Remarks

Statement of Commissioner Caroline D. Pham Regarding Political Event Contracts

September 22, 2023

Consistent with my earlier vote to abstain in May 2023, I abstain from voting on this order because I continue to believe that the United States Court of Appeals for the Fifth Circuit's Order in *Clarke v. CFTC*,^[1] may prevent the Commission from taking action on KalshiEx, LLC's (Kalshi) congressional control political event contracts.

On May 1, 2023, the Fifth Circuit issued an Order enjoining the CFTC from "closing the PredictIt Market" or otherwise "prohibiting or deterring the trading of [PredictIt] Market contracts," until 60 days after a final judgment in that case.^[2]

As I explained in my public statement when the Commission announced its review of the subject political event contracts pursuant to Commission Rule 40.11,^[3] any Order by the Commission regarding the listing of Kalshi's political event contracts could be construed to implicate the Fifth Circuit's May 1 Order because the PredictIt Market also lists political event contracts.^[4]

In fact, the Fifth Circuit, in a July 21, 2023 opinion, has already found that the Commission has violated the injunction in the May 1 Order.^[5] The Commission only narrowly avoided sanctions for violating the injunction because of the mercy of the court.

Because I cannot take any action that may be construed to again violate the Fifth Circuit's May 1 Order enjoining the Commission from otherwise "prohibiting or deterring the trading" of contracts listed on the PredictIt Market, and because political event contracts are listed on the PredictIt Market, I therefore must abstain from voting on Kalshi's political event contracts.

[1] See *Clarke v. CFTC*, No. 22-51124 (5th Cir. May 1, 2023) (unpublished order).

[2] *Id.*

[3] 17 C.F.R. § 40.11.

[4] See Dissenting Statement of Commissioner Caroline D. Pham on Political Event Contracts, U.S. Commodity Futures Trading Commission (June 23, 2023), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062323> (<https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062323>).

[5] *Clarke v. CFTC*, 74 F.4th 627, 641-43 (5th Cir. 2023).

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