TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

**Verlon M. Jose**
CHAIRMAN

**Carla L. Johnson**
VICE CHAIRWOMAN

April 30, 2026

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
*Sent via online submission*

Re: Written Comments on ANPRM Regarding "Prediction Markets" (RIN 3038-AF65)

Dear Secretary Kirkpatrick,

These are the written comments of the Tohono O'odham Nation (Nation), submitted in response to the Commodity Futures Trading Commission's (CFTC's) request for comments on its Advance Notice of Proposed Rulemaking (ANPRM) regarding "Prediction Markets."

The Nation strongly opposes any CFTC regulation that would purport to allow prediction markets to offer what by all reasonable standards constitutes gaming on sporting events, or would allow prediction markets to circumvent the carefully crafted federal, state and tribal laws that already regulate sports betting in the United States. Further, we are deeply concerned that the CFTC is failing in its congressionally-mandated duty to protect the public interest given that prediction markets already are being misused to offer unregulated gaming in the form of sports betting in violation of federal, state and tribal laws. Worse, the CFTC has become an active *proponent* of the use of prediction markets for sports betting, submitting legal briefs to oppose the enforcement of state and tribal gaming laws in litigation to which it is not even a party.

For the reasons outlined in this submission, the Tohono O'odham Nation strongly urges that "gaming" and "gambling" are synonymous, and the events contracts currently being offered by prediction markets are unquestionably gaming; that accordingly the CFTC does not have statutory authority to permit or regulate sports related event contracts; and further that the CFTC is obligated to heed Congress' clear direction that sports betting through prediction markets is "contrary to the public interest" in that it clearly involves "gaming" that is unlawful under

federal and/or state law, as well as tribal law. Consequently, the CFTC must issue regulations that make clear that sports betting on prediction markets is illegal under the Commodities Exchange Act, 7 U.S.C. § 1 *et seq.* (CEA) and that the CFTC does not have authority to regulate sports betting or preempt other federal, state or tribal laws that govern gaming.

**The Tohono O'odham Nation, IGRA and Arizona State Gaming Law**

The Tohono O'odham Nation is a federally recognized tribe to which the United States owes a general trust responsibility. The Nation relies on the revenue it generates from its five brick-and-mortar gaming facilities in Arizona, each of which is operated in accordance with the strict statutory and regulatory structures set forth in the federal Indian *Gaming* Regulatory Act, 25 U.S.C. §§ 2701, *et seq*. (IGRA). IGRA in turn incorporates into its federal regulatory structure elements of Arizona's state law governing gaming, as well as our own tribal law. Accordingly, the sports betting the Nation offers at its brick-and-mortar casinos is operated pursuant to federal, state and tribal law. Under federal law, the proceeds from these facilities must be used for vital tribal governmental purposes, charitable contributions, and federally-approved payments to the State and local governments. The Nation also conducts sports betting pursuant Arizona state law (*i.e.,* pursuant to a license issued by the Arizona Department of Gaming). *See*, A.R.S. §§ 5-1301, *et seq.*

For all of these reasons, the Nation has a direct interest in the proper implementation of the CEA, and in the CFTC's related regulation of prediction markets.

**Sports Contracts are Gaming/Gambling**

There is no serious confusion as to the distinction between gambling and investing in the financial markets. The CFTC's irresponsible failure to affirmatively make this distinction has allowed prediction markets to enter the U.S. gaming market free of the responsible legal and regulatory framework designed to protect the public, as set forth in existing federal, state and tribal laws that regulate gaming. The CFTC has allowed these prediction markets to rely on convoluted semantic arguments that defy common sense to try to reframe sports betting, which is undeniably a gaming activity, as something entirely different: a "sports event contract" over which only the CFTC has regulatory jurisdiction. Congress' clear direction, however, is that the role of the CFTC is to regulate markets that serve bona fide hedging and price-discovery functions that serve an inherent economic interest, not to authorize speculative gambling on the outcomes of events unrelated to economic commodities.

As the Commission has correctly acknowledged, the terms "gaming" and "gambling" are synonyms and used interchangeably. 89 Fed. Reg. 48968, 48975 (June 10, 2024) ("The proposed definition recognizes … that the terms 'gaming' and 'gambling' are used interchangeably in common usage and dictionary definitions."); Defendant Commodity Futures Trading Commission's Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, *KalshiEX LLC v. Commodity Futures Trading Commission*, 2024 WL 1268593 (D.D.C. Feb. 26, 2024) (noting that "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."). The district court's subsequent ruling in the foregoing litigation that Congress used the term "gaming" in the CEA to mean something other than "gambling" cannot be reconciled with 150 years of contrary state court, federal court, and statutory authority. As described in the attached summary provided at Appendix A to this submission, a huge number of state and federal court opinions throughout the country have used the terms synonymously and/or use those terms interchangeably.[1] As also noted in this Appendix, the United States Congress has enacted various statutes that also treat "gambling" and "gaming" as synonyms, most notably through IGRA, which authorizes and regulates "gambling" in Indian Country, while using the synonymous term "gaming."

Where terms are synonymous, the courts should read nothing into Congress' use of one term versus the other. *All Party Parliamentary Grp. on Extraordinary Rendition v. DOD*, 754 F.3d 1047, 1051 (D.C. Cir. 2014) ("[T]he words 'representative' and 'agent' are synonyms. … Where, as here, two words share at least one common meaning, we read nothing into Congress's use of one rather than the other. *See Tyler v. Cain*, 533 U.S. 656, 664, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001) ('Congress, needless to say, is permitted to use synonyms in a statute.').") Absent unmistakable evidence that Congress intended to use the term "gaming" in Dodd-Frank to mean something other than "gambling," and there is none, the term "gaming" in 7 U.S.C. § 7a-2(c)(5)(C) must be read to mean "gambling."

**Congress Did Not Authorize the CFTC to Approve or Regulate Gaming**

In 1936 Congress enacted the CEA to regulate trading in futures in wheat, corn, and other agricultural commodities. Pub. L. No. 74-675; 49 Stat. 1491 (1936). "Futures"—legal contracts to buy or sell something at a predetermined price for delivery at a specified time in the future—

[1] This includes scores of federal court decisions both outside the context of IGRA, and those relating to Indian gaming and/or construing Congress' use of the term "gaming" in IGRA to mean "gambling," or treat the terms "gaming" and "gambling" as synonymous. *Id*.

allow businesses to hedge against price volatility.[2] In 1974 Congress amended the CEA to encompass nearly all commodities, including non-agricultural commodities, and to cover other derivatives,[3] including "options." Pub. L. No. 93-463, § 201(b); 88 Stat. 1389 (1974). In the 1974 CEA amendments Congress also created the CFTC "to consolidate federal regulation of commodity futures trading" in one agency, giving the CFTC "exclusive jurisdiction" over futures and options that are traded on designated contract markets (DCMs) such as the prediction markets. *See Merrill Lynch, Pierce, Ferrer & Smith, Inc. v. Curran*, 456 U.S. 353, 386-87 (1982); *see* 7 U.S.C. § 2(a) (1974).

In 2000, Congress enacted the Commodity Futures Modernization Act of 2000, Pub. L. 106-554, 114 Stat. 2763 (2000), which largely deregulated futures trading, exempting from regulation "swaps" and other derivatives (where credit risk is borne by the individual counterparties). *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, Cong. Rsch. Serv., R41350, at 19 (2017). A swap is a contract between two parties to exchange (or "swap") cash flows at specified intervals, calculated by reference to an index, such as interest rates, currency rates, or security or commodities prices, to hedge risk on those obligations. *Thrifty Oil Co. v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 322 F.3d 1039, 1042 (9th Cir. 2003).

The deregulation of credit default swaps was a key factor in the 2007-2008 Financial Crisis. In response Congress enacted the Dodd–Frank Wall Street Reform and

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[2] More precisely, a "futures contract" is an "agreement to purchase or sell a commodity for delivery in the future: (1) at a price that is determined at initiation of the contract; (2) that obligates each party to the contract to fulfill the contract at the specified price; (3) that is used to assume or shift price risk; and (4) that may be satisfied by delivery or offset." CFTC, Glossary: A Guide to the Language of the Futures Industry, https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm (last visited Apr. 22, 2026).

[3] A "derivative" is a contract "used to hedge risk or to exchange a floating rate of return for fixed rate of return," "the price of which is directly dependent upon (*i.e.* derived from) the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed upon pricing index or arrangement (*e.g.*, the movement over time of the Consumer Price Index or freight rates)," including "futures, options, and swaps." CFTC, Glossary: A Guide to the Language of the Futures Industry, https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm (last visited Apr. 22, 2026). An option is a "contract that gives the buyer the right, but not the obligation, to buy or sell a specified quantity of a commodity or other instrument at a specific price within a specified period of time, regardless of the market price of that instrument." *Id*.

Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203; 124 Stat. 1376 (2010).[4] Among many other things, Dodd-Frank expanded the CEA to cover "swaps," including contracts based on interest rates, currencies, physical commodities, and some credit default swaps. Dodd-Frank added a definition of "swap" to the CEA at 7 U.S.C. § 1a(47) that is lengthy, but focuses squarely on transactions which hedge financial risk related to: "interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind" (§ 1a(47)(A)(i), § 1a(47)(A)(iii)); "the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein" (§ 1a(47)(A)(i)); and "any purchase, sale, payment, or delivery … that is that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency …" (§ 1a(47)(A)(ii)).

Proponents of the legality of sports-betting event contracts cherry-pick words out of that definition to argue that the CEA gives the CFTC authority to authorize and regulate such contracts. But each subsection of the definition of swap must be construed in light of the entirety of the definition. Constructions of § 1a(47)(A)(ii) focusing narrowly on "payment" and "event or contingency associated with a potential financial, economic, or commercial consequence," ignore the adjacent words "purchase," "sale," and "delivery"" – all of which are consistent with hedging risks associated with interest rates, commodities, and the like – and none of which are consistent with transactions in the nature of sports betting.

**Using Prediction Markets for Sports Betting is Contrary to the Public Interest**

Any doubt about how the CEA should be interpreted must be resolved by reference to Congress' inclusion in the CEA through Dodd-Frank of a "[s]pecial rule for review and approval of event contracts and swaps contracts," 7 U.S.C. § 7a-2(c)(5)(C). Known colloquially as the "Special Rule," it 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;*
(II) terrorism;
(II) assassination;

[4] The stated purposes of Dodd-Frank were to "promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail," to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes." *Id*.

(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). Section 7a-2(c)(5)(C)(ii) then concludes, "[n]o agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity. Prediction markets offer event contracts are literally allowing *gaming* on sports events, and depending on location, this is an *activity that is unlawful under Federal or State law.*

On the gaming question, Senator Blanche Lincoln (then Chair of the Senate Committee on Agriculture, Nutrition and Forestry) explicitly stated that event contracts should not be used for gambling.[5] She stated that "[i]t would be quite easy to construct an "event contract" around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling."[6] When asked by Senator Feinstein about whether what now is 7 U.S.C. § 7a-2(c)(5)(C) 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). Indeed, the Commission has previously acknowledged that Dodd-Frank's 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, "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).

On the question of violating federal or state law, one of the fundamental reasons why the failure to understand and treat sports-related event contracts as a form of *gaming* is against the public interest is because it allows the prediction markets that offer them to entirely circumvent the then the typical protections that are afforded to the public under the federal IGRA, and under various state and tribal gaming laws. Those laws ensure enforcement of proper age restrictions, geographical/territorial restrictions, safety mechanisms to deter and/or mitigate compulsive behaviors, wager limitations, etc. Indeed, gambling is associated with certain vulnerabilities,

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[5] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche
Lincoln), available at www.congress.gov/111/crec/2010/07/15/CREC- 2010-07-15-senate.pdf.
[6] *Id*.

including potential social harms, and is susceptible to abusive and wrongful practices by unscrupulous actors. The anonymity associated with trading on the prediction market makes it vulnerable to money laundering and corruption. Already there have been numerous scandals revealing the vulnerabilities of the prediction markets to abuse, corruption, and corrupt practices from insider trading to market manipulation to outride fraud. This is precisely why Congress sought to exclude gaming under the CEA as a matter of public interest.

Indeed, gaming (including sports betting) is already extensively regulated. Existing rules for sports wagering limit both the event participants and the bettors. States and tribes have both extensive player tracking, exclusion, and Know-Your-Customer systems to detect manipulation, prevent bad actors both betting and working in gaming, and to prevent and reduce problem gaming. The Nation regulates gaming every day. We license employees and vendors, enforce internal controls, monitor surveillance, complete audits, and answer to both the federal government and the State of Arizona. Prediction market companies provide none of this oversight, yet they want online access to the same players, with no geographic boundaries, and with no tribal or state review or approval. From both a legal and compliance standpoint, prediction markets create an uneven playing field, which also upends market expectations.

Tribes and states have invested significant time, money, and effort into addressing problem gaming, and tribes and states are left to deal with the issue of addiction and the cost to address it—which will ultimately increase with the rise of prediction markets. It is no secret that the proliferation of sports betting in the wake of the Professional and Amateur Sports Protection Act's (PASPA's) demise has brought an influx of young, vulnerable gamblers, usually men, to gaming. After decades of only regulating commodities trading, the CFTC should ask itself:

- Is the CFTC really in a position to take over regulation of problem gaming for the entire country?
- Is problem gaming even a policy concern for CFTC?
- Does CFTC have legal or practical mechanisms to restrict access to DCMs for addicted gamblers?
- Will prediction markets take legal responsibility for consumers/patrons, including our children, who fall into addiction, and will they give back to the communities which they operate in?

Currently, the CFTC is impermissibly allowing an ecosystem of regulatory arbitrage, one that is thriving specifically because it bypasses the "responsible gaming" anchors (self-exclusion and advertising limits) that tie down licensed sportsbooks. For example:

- *The 18+ vs. 21+ Exploit*: Licensed sportsbooks are strictly regulated to a 21+ age requirement in most jurisdictions to protect young adults; prediction markets exploit a loophole to onboard 18-year-olds, deliberately targeting a demographic with lower financial literacy.

- *Influencer Predation:* Aggressive social media influencers are currently grooming these vulnerable populations, encouraging young girls to "invest" their lunch hour to make $28 on Kalshi.

- *Zero Enforcement Capacity*: The CFTC has no personnel with specialized training or a mandate to enforce the critical controls necessary to protect the vulnerable. This has created a vacuum where no active regulatory body is policing the predatory marketing or the financial ruin of young participants.[7]

**Contrary to CEA's Core Principle 3, Sports Event Contracts are Inherently Susceptible to Market Manipulation**

As described above, sports event contracts are inherently "gaming" under the CEA and therefore must be prohibited by the CFTC as contrary to the public interest. CEA's Core Principle 3 provides that a DCM may "list on the contract market only contracts that are not susceptible to market manipulation." 7 U.S.C. § 7(d)(3). The gaming nature of sports event contracts make them inherently susceptible to market manipulation. The lack of a legitimate commercial hedging purpose for sports events contracts, and their susceptibility to market manipulation and anti-competitive practices further underscores why these contracts are contrary to the public interest under the CEA's Special Rule.

*Market Displacement & Direct Substitution*

The regulatory gap created by the CFTC's lack of enforcement so far has created significant disruptions in the gaming regulation field, to the detriment of gaming tribes and states across the country. The CFTC must look past the "financial innovation" veneer to the

[7] On top of this, the CFTC currently consists of only one person, despite Congress's intention that it be governed by a bipartisan, five member Commission It is not clear that this single person has the legal authority to function as an independent agency/commission and/or to regulate prediction markets

undeniable evidence of market displacement. The data confirms that prediction markets are not "alternative risk management" tools, but rather a direct substitute for regulated sports wagering:

- *The Handle Collapse & The Empirical Proof of Direct Substitution*: Our internal data analyzes monthly handle for every mobile wagering state since 2022. By isolating the 2023 "growth noise," the baseline established years of double-digit growth (*i.e.* mobile wagering grew after legalization). Since December 2025, every single month—specifically December 2025, January 2026, and February 2026—has seen a consistent month-over-month decline in regulated handle.

- *Volume Correlation:* This decline correlates directly with the aggressive volume spikes in sports-based prediction contracts, proving that these platforms are cannibalizing the regulated industry by offering the same product without the same rules.

The CFTC must consider the effect on existing regulated markets. It is no coincidence the DCM registrations have skyrocketed since the CFTC has permitted the sports betting loophole – from 1936 to 2020, there had been 12 active DCMs for various commodities. Since 2025 alone, there have been 20 more applications and registrations. This is clearly not because there is heightened demand for new commodities exchanges, but rather because of the abuse of the self-certification process and manipulation of the definitions of "swaps." The CFTC must avoid encroaching upon the gaming market that is already extensively regulated under state, tribal and federal law, as it does with securities. *Hedging Purpose, Anticompetitive Practices, and Potential for Market Manipulation*

Event contracts generally do not play any role in hedging commercial risks. This is the fundamental issue with the expansion of events contracts. The industry is not using the occurrence of an event, such as a sporting event, as a hedge against any commercial activity. Whether or not a team wins a sports championship does not play any role for the owners of the team, venue, or other commercially interested party in managing risk associated with the occurrence of such event. Further, weather-based cancellations of events can be better managed through insurance. Those taking contracts on sporting events have no commercial risk, and event contracts therefore serve no hedging function. Despite the fact that events contract DCMs argue their markets are for hedging financial risk, not simply gaming, the CFTC should consider that casino patrons can also hedge bets, for example at the roulette table, to limit financial risk. Hiding behind a veneer of commercial hedging does not transform gaming into another legitimate activity.

Contracts that imitate wagers or sports events contracts that depend on the outcome of the event, not the occurrence or non-occurrence of the event, serve no legitimate commercial

hedging purposes. For example: if sport ticket holders wished to maximize their ticket values at the start of a season by taking out additional contracts for the value of the ticket over time against the venue or team owners—these contracts may fluctuate in value as teams win or lose, affecting whether people want to attend. This arrangement would at least mimic other commodities hedging and serve a purpose of protecting value for both ticket holders and the venues. But this is not what occurs on DCMs today.

The current landscape of the contracts offered by existing companies is a far cry from ticket price hedging. It is simply sports betting. There are no underlying assets, tangible or otherwise, at risk with respect to contracts being placed on sporting events. The microstructure of these platforms reveals a predatory "house" dynamic. These are not neutral exchanges; they are decentralized bookmaking engines:

- Exposure to Investor Sharpness: Traders on the other side of these transactions have full exposure into the sharpness of an investor.

- Bookmaking by Proxy: These liquidity providers have the option to simply not trade with that customer—the exact mechanism used by bookmakers to "limit" or "ban" sharp bettors. By permitting the "house" (liquidity providers) to selectively refuse trades based on counterparty skill, the Commission is facilitating bookmaking under the guise of an exchange.

These concerns are exactly why the CFTC should not allow event contracts – they are easily susceptible to manipulation by actors with insider events within their control. This includes sports players and personnel, politicians and political aides, consultants and lobbyists, and anyone with a connection to information subject to a contract. In the commodities trading field, many of the pricing concerns are due to climatic events or natural circumstances that are outside the general public's ability to obtain insider knowledge. There is no public utility to giving a pass to what is effectively insider trading on events contracts.

Given the trends in contracts not regarding commodities, the CFTC should bring back its prior 'economic purpose' test. A revival of the economic purpose test would set a higher bar for event contracts to demonstrate a reasonable expectation that the contracts will be used for hedging and/or price basing on more than an occasional basis. As discussed here, events contracts, particularly for sports events, have no meaningful use for price basing or hedging whatsoever. If the CFTC revives this test, it will bring events contracts more in line with the intent of the CEA to be an economic tool for the commodities market, not a new avenue for gaming.

With respect to comparisons to insurance, events contracts on commodities make sense as a hedge on uncertainty in commodities production and its effect on future pricing. This differs from insurance, which may compensate for loss of the commodity due to unforeseen circumstances. Where an event does not concern some underlying commodity, such as a sporting event, there is no pricing that the contracts affect. Event insurance often compensates the parties to the event, whether the venue, attendee, or participants, for the loss of income from its non-occurrence.

*Prediction Markets are Prone to Manipulation*

Prediction markets are also more prone to manipulation simply based on the effect that individuals can have on the outcome. Unlike agricultural DCMs, there are few ways individuals can manipulate the output of an event such as a bumper crop. There may be seasons a farmer can think they may do better based on weather patterns, but will have no legitimate ability to impact the outcome. Predictions on celebrity events, political activity such as introduction of legislation, court decisions, or sporting events, have actors that can directly change the outcome of the event.[8] There is no reasonable way for an agency to prevent the influence of that control within the market through regulation.

Prediction markets can easily skirt actions that appear to be outright deception or manipulation. Individuals with the ability to influence events subject to events contracts can be acting in a way that is not deceptive if they have a legitimate reason to carry out such action. For example, a clerk for a major Supreme Court case may already know how a Justice is inclined to rule, and the Justice may not know of the event contract. There is nothing deceptive or illegitimate about the Justice's actions in issuing the opinion, but the insider knowledge has benefitted the clerk and manipulated the market.

This prohibition, like in the example above, is easy to skirt. Government officials or those who are closely connected to them may have indirect information that they can, by inference, use to bet on events. There would need to be a stricter definition of "information" to proscribe this behavior that will be challenging to define. This only also applies to one subset of politically related prediction markets, and has no effect on sports or other events. Further, many information

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[8] For its part, Kalshi previously tried, unconvincingly, to split the baby on the question of gaming when it comes to betting on elections, arguing that "an event contract therefore involves 'gaming' if it is contingent on a game or a game-related event—like the Kentucky Derby, Super Bowl, or Masters golf tournament . . . it is undisputed that elections do not relate to games in any sense." Brief of KalshiEX LLC, *KalshiEX LLC, Plaintiff-Appellee, v. Commodity Futures Trading Commission, Defendant-Appellant*, 2024 WL 4802698, at *17 (D.C. Cir. Nov. 14, 2024).

exchanges with government officials may not carry the requisite intent by the government official to be covered, yet can be acted on by those who acquire nonpublic information.

The existing regulation of gaming takes into consideration the potential for manipulation, specifically by creating games for rules, and having independent oversight of how players earn payouts, how payouts are awarded, money handling, and backgrounding of employees. Events contracts are highly susceptible to human influence, such as winners of awards, elections, sports games, or championships. Because sports betting has existed for so long, many jurisdictions have already crafted ways to proscribe the influence of players, coaches, and organizations from manipulation of outcomes. Under Core Principle 3, DCMs may not list contracts that are so readily susceptible to manipulation and the CFTC is not equipped to regulate such contracts.

*Anticompetitive Practices*

The CFTC should be considering anticompetitive circumstances already playing out in sports betting events contracts: DCMs that operate as parties that enter into contracts on their own markets, effectively acting as the "house" would in a sportsbook. Further, the collaboration of major DCMs thus far should raise concern about inter-DCM collusion and political connection. Rather than acting simply as exchanges, these DCMs are using markets as independent businesses to compete with each other for market share. The CEA did not intend for the CFTC to monitor how these businesses engage with and compete against one another as businesses, rath than just as exchanges. The CFTC will need to contemplate what happens when these companies seek to acquire one another as part of their long term business models. The inherent anticompetitive practices already playing out in the offering of sports betting event contracts further demonstrates why these contracts are gaming and contrary to the public interest under CEA's Special Rule If the CFTC does not consider registered entities to be small entities under the Regulatory Flexibility Act, then there is no additional need to consider impacts to them. This suggestion appears to be a way to give favoritism and special consideration to registered entities in order to give DCMs more favorable treatment. Given the explosion in DCM registration since 2024 and ability to self-certify with no oversight, there is clearly no issue with smaller sized businesses entering the DCM market.

**The CFTC Should Adopt a Categorical Prohibition on Sports Events Contracts**

The Commission has asked for input on public interest considerations and prohibited contract activities listed in CEA Section 5c(c)(5(C). Relevant to tribal gaming efforts are the CEA's prohibition on both gaming and "activity that is unlawful under any Federal or State law." The CFTC should consider that in the sports context, states and tribes have delicately negotiated

relationships prescribing what activities are subject to Class III compacts under the Indian Gaming Regulatory Act (IGRA) and state laws. Given that these fields already have existing regulation and significant stakes after decades of negotiation, the CFTC should adopt a categorical prohibition on sports events contracts given that each state with tribal gaming will have vastly different activities that are legal either under state law or federal laws.

**Defining "Gaming"**

The widely accepted definition of gaming includes the three elements of prize, chance, and consideration. IGRA itself provides more specific definitions for gaming such as bingo, and tribal/state gaming laws often have individual definitions for other games such as blackjack, roulette, or craps, for example. However, given the significant uncertainty that has been caused by the CFTC's failure to prevent prediction markets from offering "event contracts" that effectively *are* gaming activities, the Tohono O'odham Nation urges the CFTC to adopt the regulatory definition of gaming that has been developed by the Arizona Indian Gaming Association, attached as Appendix B to these comments.

The need for a clearer definition is underscored by the nonsensical results of the CFTC's broad definition that focuses only on whether an event contract has a binary outcome. For example, event contracts on these questions would not be considered "gaming":

- "Will Roulette Wheel #7 at this tribal casino land on red in the next spin?" or
- "Will the next card at the blackjack table hit or bust?"

Here the CFTC would take the position that the contracts themselves are not gaming, even though the underlying activity is.

Additionally, DCMs have repeatedly asserted that the lack of a "house" and fixed odds categorially precludes the existence of gaming, ignoring the fact that pari-mutuel betting is structured nearly identically to sports events contracts: pari-mutuel betting pools together bets on outcomes of a single event, usually a horse race, and payoff odds are calculated by sharing of the pool among all winning bets. The house only takes out fees on the bets, but does not set odds or participate itself. This is indistinguishable from individuals taking out contracts (bets) against one another in a DCM (pool) with contract pricing (payoff) changing based on how many contracts are entered into (odds) and the DCM charging a fee (take/vig).

We note too that the CFTC has failed to adopt meaningful restrictions relating to contracts that effectively allow betting on "historical" events, or other outcomes that can be determined nearly

instantaneously. The availability of these types of contracts on the prediction markets are nothing short of online gaming.

**Prediction Markets Threaten Tribal Gaming**

In its consideration of the public interest, the CFTC should know that the expansion of sports events contracts, and inevitable iGaming corollaries, threaten the tribal gaming sector with complete collapse, despite decades of tribes working hard and asserting their sovereignty against great opposition to establish their place in the market. The CFTC should remember that, due to the long and brutal history of economic destruction and paternalism imposed by the federal government, tribal economies largely suffered before gaming or were nearly entirely reliant on appropriated federal dollars. In many instances, gaming has been an economic ladder to success and self-determination for tribes. Tribal gaming, by law, funds tribal governments, cultural and educational programming, charity, and economic support for tribal members. Congress, through IGRA, and courts have repeatedly acknowledged the public policy support for tribal gaming. The CFTC cannot and should not administratively undermine what the Congress has created.

There is also a concern for state and tribal sovereignty. IGRA created a comprehensive regulatory framework for gaming by tribal governments on Indian lands, with the primary goal of advancing tribal self-determination through economic self-sufficiency. Pursuant to IGRA, Class III gaming (including sports betting) can only happen on tribal lands with several layers of tribal, state and federal permissions. This includes a Class III Tribal-State Gaming Compact which is a negotiated agreement between a tribe and state to regulate gaming and benefits both parties. DCM's offering sports event contracts violate these compacts and intrude on tribal sovereignty by essentially offering gaming on the tribe's reservation in violation of this agreement and harming both the state and tribe. Not only is this an intrusion on tribal sovereignty, but it also changes market expectations and harms tribal revenues.

Our gaming operations support essential services for the Nation. Unlike prediction market DCMs, tribes are legally required to use net gaming revenues to: fund tribal government operations or programs: provide for the general welfare of the tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies. Prediction markets pull dollars away from regulated gaming that benefits our communities directly and puts them into private pockets, with zero benefit to tribal governments or programs and services for members. Arizona tribes also give the state revenue sharing in exchange for market exclusivity. If unlicensed operators can offer betting anyway, that exclusivity does not benefit the tribes nor the state. This weakens benefits of the negotiations enshrined in the compact for every Arizona tribe, not just our Nation.

Additionally, the CFTC must consider the United States' longstanding trust responsibilities and obligation to meaningfully consult with tribes on this issue. When considering a federal action that will affect tribes, such as completely upending the tribal gaming market that is an economic engine in those communities, the United States must consider its role as trustee and avoid options that negatively impact tribes. This obligation is one the United States took on for itself at the nation's founding. Adopting rules allowing prediction markets could be a death sentence for tribal gaming, and as such, the federal government must consider its role in protecting tribal economies before crossing a point of no return.

Finally, under Executive Order 13175, the CFTC is required to adhere to the following criteria when formulating and implementing policies that have tribal implications:

- Respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

- The Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

- When undertaking to formulate and implement policies that have tribal implications, agencies shall:

    - encourage Indian tribes to develop their own policies to achieve program objectives;
    - where possible, defer to Indian tribes to establish standards; and
    - in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Before CFTC adopts any further regulation respecting prediction markets, it must engage in meaningful government-to-government consultations with tribal nations. It must also consider legal interpretations of its own laws, such as the definition of "swaps" and "gaming" that are consistent with federal law and the federal trust responsibilities.

**Conclusion**

The Nation opposes any rulemaking effort that supports prediction markets as they undermine tribal sovereignty, weaken compact protections, ignore compliance standards, and

threaten the long-term stability of tribal gaming. The Nation strongly opposes the expansion of these markets and supports enforcement efforts against them. Because many event contracts lack a legitimate pricing basis, facilitate the discretionary risk-refusal typical of bookmaking, and thrive on the exploitation of 18-year-olds through regulatory arbitrage, they constitute illegal gaming. Prediction markets are contrary to the public interest and must be treated as the predatory gaming products they are.

We appreciate the opportunity to submit these comments and remain ready for meaningful dialogue on developing viable rules regarding prediction markets.

Sincerely,



Verlon M. Jose
Chairman

# Appendix A

**State Court, Federal Court, and Statutory Recognition of the Synonymous or Interchangeable Use of the Terms "Gaming" and "Gambling"**

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### FEDERAL STATUTES

- 18 U.S.C. § 1081 (part of the Gambling Ship Act) ("Definitions The term '***gambling*** establishment' means any common ***gaming*** or ***gambling*** establishment operated for the purpose of ***gaming*** or ***gambling***, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.")
- 28 U.S.C. § 3704 (part of the Professional and Amateur Sports Protection Act) ("(a) Section 3702 shall not apply to— … (3) a betting, ***gambling***, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and (B) any commercial casino ***gaming*** scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality … (b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian ***Gaming*** Regulatory Act (25 U.S.C. 2703(4)).")

### FEDERAL COURT DECISIONS (OUTSIDE THE CONTEXT OF INDIAN GAMING AND THE INDIAN GAMING REGULATORY ACT)

- *United States v. Rabinowitz*, 339 U.S. 56, 86 (1950) ("'just as a warrant to arrest a man charged with murder would carry with it authority to seize the bloody knife or smoking pistol which killed,' the instruments of the crime of ***gaming*** could be seized in arresting a proprietor of a ***gambling*** house")
- *FTC v. R. F. Keppel & Bro., Inc.*, 291 U.S. 304, 307-08 (1934) ("The Commission found that the use of the break and take package in the retail trade ... is a lottery or ***gambling*** device which encourages ***gambling*** among children… It found further that in some states lotteries and ***gaming*** devices are penal offenses; that the sale or distribution of candy by lot or chance is against public policy; that many manufacturers of competing candies refuse to engage in the distribution of the break and take type of package because they

regard it as a reprehensible encouragement of ***gambling*** among children; and that such manufacturers are placed at a disadvantage in competition.")

- *Manhattan Life Ins. Co. of New York v. Cohen*, 234 U.S. 123, 132-23 (1914) ("Coming to consider the fact that both parties had conceded that the transaction out of which the assignment of the policies grew was purely of a ***gambling*** nature and that that fact had been stipulated, the court refused to sustain the following proposition which was insisted upon by the defendant company: 'When an insurance policy is assigned as part of a ***gaming*** transaction, the law will give no relief to either party, or to their heirs, executors or assigns, regardless of all other questions, but will leave the parties where they have voluntarily placed themselves.'")
- *Higgins v. McCrea*, 116 U.S. 671, 684 (1886) ("His case, as stated by himself in his answer and counter-claim, was that the money was advanced by him to carry on a ***gambling*** transaction, that with his concurrence the money so advanced was used in such ***gambling*** transactions, and that by the statutes of Illinois, where the contracts were made, they were treated as ***gaming*** contracts and declared illegal and void, and the making of them a criminal offence.")
- *Thompson v. Bowie*, 71 U.S. 463, 470, 4 Wall. 463 (1867) ("Bowie sought to avoid their payment on the ground that they were founded on a ***gaming*** consideration, and therefore void, even in the hands of an indorsee, without notice, because the statute of 9th Anne, avoiding ***gambling*** contracts, was in force in the District of Columbia, where they were executed.")
- *Aristocrat Techs. Australia Pty Ltd. v. Int'l Game Tech*., 709 F.3d 1348, 1360 (Fed. Cir. 2013) ("While Crevelt's declaration explains, at length, how a ***gambling*** machine's software 'carr[ies] out or implement[s] a bet by executing computer code,' it fails to explain whether the patent's use of 'making a wager' refers to: (1) the steps performed by the ***gaming*** machine when it implements a bet; or (2) to the antecedent acts performed by the player when she places a bet.")
- *IGT v. Alliance Gaming Corp.*, 702 F.3d 1338, 1348 (Fed. Cir. 2012) (Bryson, J. dissenting) ("However counterintuitive it may be to those who are not habitués of ***gambling*** establishments, the appellants' evidence raises a triable question of fact as to whether there is a separate market for slot machines that include a secondary bonus game with a spinning wheel, machines that are referred to as 'wheel games' in the ***gaming*** industry.")
- *WMS Gaming Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1360 (Fed. Cir. 1999) ("IGT counters that virtual reel slot machines were not legalized until 1984 because no ***gambling*** device is legal until it is approved by the state regulatory authorities and that no ***gaming*** license for such a device was requested until 1984.")
- *United States v. One Big Six Wheel*, 166 F.3d 498 (2d Cir. 1999) ("The ***Gambling*** Ship Act, codified at 18 U.S.C. §§ 1081-1084 (1994), prohibits offshore ***gaming*** except on certain voyages beyond 'the territorial waters of the United States.' 18 U.S.C. § 1081.")

**FEDERAL COURT DECISIONS RELATING TO INDIAN GAMING AND/OR CONSTRUING "GAMING" OR "GAMBLING" IN IGRA**

- *United States v. Seminole Nation of Okla*., 321 F.3d 939, 941 (10th Cir. 2002) ("In 1988, Congress enacted the Indian ***Gaming*** Regulatory Act ('IGRA') which provided a comprehensive system to regulate ***gambling*** activities on Indian lands.")
- *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 689-90 (1st Cir. 1994) ("The ***Gaming*** Act is an expression of Congress's will in respect to the incidence of ***gambling*** activities on Indian lands.")
- *accord* G*reater New Orleans Broadcasting Assn. v. United States*, 527 U.S. 173, 178-79, 197 (1999) ("T]he Indian ***Gaming*** Regulatory Act (IGRA) authorized Native American tribes to conduct various forms of ***gambling***—including casino ***gambling***—pursuant to tribal-state compacts if the State permits such ***gambling*** 'for any purpose by any person, organization, or entity.' … By the mid-1990's, tribal casino-style ***gambling*** generated over $3 billion in ***gaming*** revenue—increasing its share to 18% of all casino ***gaming*** revenue, matching the total for the casinos in Atlantic City, New Jersey, and reaching about half the figure for Nevada's casinos.") (internal citation omitted)
- *Michigan v. Bay Mills Indian Cmty*., 572 U.S. 782, 783, 792 (2014) ("[N]umerous other IGRA provisions make clear that 'class III ***gaming*** activity' refers to the ***gambling*** that goes on in a casino … Section 2717(a)(1) specifies fees to be paid by 'each ***gaming*** operation that conducts a class II or class III ***gaming*** activity'—signifying that the ***gaming*** activity is the ***gambling*** in the poker hall")
- *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 722 (2022) ("Categorically denying any interest in ***gaming***, the Tribe requested that the pending bill conferring federal trust status be amended to prohibit on the reservation all ***gambling*** as defined by Texas law.") (Roberts, Thomas, Alito, and Kavanaugh dissenting)
- *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 211, 218 (1987) ("In light of the fact that California permits a substantial amount of ***gambling*** activity, including bingo, and actually promotes ***gambling*** through its state lottery, we must conclude that California regulates rather than prohibits ***gambling*** in general and bingo in particular. … More specifically, the Department of the Interior, which has the primary responsibility for carrying out the Federal Government's trust obligations to Indian tribes, has sought to implement these policies by promoting tribal bingo enterprises. … Here, the Secretary of the Interior has approved tribal ordinances establishing and regulating the ***gaming*** activities involved.")
- *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) ("IGRA divides ***gaming*** activity into three classes, with each class subject to different degrees of federal and state regulation. The most significant aspect of IGRA concerns Class III ***gaming***, 'the types of high-stakes games usually associated with

Nevada-style ***gambling***.' Examples of Class III gaming include blackjack, baccarat, slot machines, and parimutuel horse-wagering.") (internal citations omitted)

- *Cayuga Nation v. Tanner*, 6 F.4th 361, 367-68 (2d Cir. 2021) ("[I]n the wake of the Supreme Court's decision in *Bryan v. Itasca Cty.*, in which the Court reaffirmed that states generally lack authority to regulate Native Americans on reservation land, tribes began experimenting with ***gambling*** facilities as a means of generating revenue. By the 1980s, tribal ***gaming*** had become both a significant source of revenue for many tribes and a considerable source of tension between tribes running ***gambling*** operations and the governments of the states in which their reservations were located. Against that backdrop, Congress enacted IGRA in 1988 'to provide a statutory basis for the operation of ***gaming*** by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.' IGRA preempts all state and local regulatory authority over certain classes of ***gambling*** conducted on 'Indian lands,' defined, in relevant part, as 'all lands within the limits of any Indian reservation.'") (internal citations omitted)
- *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1149-50 (9th Cir. 2019) ("Congress passed IGRA to establish a framework for regulating ***gaming*** on Indian lands. Under that framework, IGRA creates three classes of ***gaming***. Class III ***gaming***, the kind at issue here, 'includes the types of high-stakes games usually associated with Nevada-style ***gambling***,' and 'is subject to a greater degree of federal-state regulation than either class I or class II ***gaming***.'") (internal citations omitted)
- *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 969 (9th Cir. 2018) ("The Indian ***Gaming*** Regulatory Act categorizes various forms of ***gambling*** into three different 'Classes.'")
- *Big Lagoon Rancheria v. California*, 789 F.3d 947, 949 (9th Cir. 2015) ("Class III ***gaming***, which is contemplated by the tribe here, often involves 'the types of high-stakes games usually associated with Nevada-style ***gambling***.'")
- *Tulalip Tribes of Wash. v. Washington*, 783 F.3d 1151, 1153 (9th Cir. 2015) ("Class III ***gaming***, the subject of this appeal, includes 'all forms of ***gaming*** that are not class I ***gaming*** or class II ***gaming***,' 25 U.S.C. § 2703(8), such as slot machines and other 'high-stakes games usually associated with casino-style ***gambling***' …")
- *Michigan v. Sault Ste. Marie Tribe of Chippewa Indians*, 737 F.3d 1075, 1077 (6th Cir. 2013) ("IGRA provides a framework for government regulation of ***gaming*** activities on Indian lands … In addition, IGRA divides ***gaming*** into three categories. Class I consists of traditional Indian games or social games for prizes of minimal value, and is regulated exclusively by tribal governments; class II includes activities like bingo, and is regulated by tribes and the National Indian Gaming Commission, but not by the State; and class III, casino style ***gambling***, requires a tribal gaming ordinance, approval from the National Indian Gaming Commission, and an IGRA 'compact' between the tribe and the State in which the ***gaming*** will occur.")

- *Gila River Indian Cmty. v. United States*, 729 F.3d 1139, 1156 (9th Cir. 2013) ("In January 2009, the Nation transferred ownership of Parcel 2 to itself. Only days later, it filed its application asking the Secretary to take the property into trust and grant the Nation permission to establish a Class III, Las Vegas-style ***gambling*** facility. The Nation has advertised that this 'new casino will be the largest in the state.' There are currently no ***gaming*** facilities within the City of Glendale.") (internal citation omitted)
- *Rincon Band of Luiseno Mission v. Schwarzenegger*, 602 F.3d 1019, 1042 (9th Cir. 2010) ("IGRA divides ***gaming*** into three classes. Class I involves traditional tribal ***gaming***; class II involves bingo and non-banked card games; class III involves ***gambling*** not covered in class I or class II (such as casino-style ***gaming***, including slot machines and banked card games).")
- *Artichoke Joe's Calif. Grand Casino v. Norton*, 353 F.3d 712, 715 (9th Cir. 2003) ("At issue in this case is class III ***gaming***, the most heavily regulated and most controversial form of ***gambling*** under IGRA.")
- *Scutti Enters., LLC v. Park Place Entm't Corp*., 322 F.3d 211, 217 (2d Cir. 2003) ("Class III ***gaming*** covers types of ***gambling*** other than bingo and games similar to bingo, and includes games such as roulette, craps and blackjack.")
- *Mo. River Servs., Inc. v. Omaha Tribe of Neb*., 267 F.3d 848, 850-51 (8th Cir. 2001) ("In October 1988, Congress passed the Indian ***Gaming*** Regulatory Act, 25 U.S.C. § 2701 *et seq*. ('IGRA'), which requires that all contracts dealing with ***gaming*** on Indian land be approved by the chairperson of the National Indian Gaming Commission ('NIGC'). IGRA defines three classes of ***gaming***, with Class I being social games, Class II being bingo and similar games, and Class III being all other forms of ***gambling***.")
- *Diamond Game Enters., Inc. v. Reno*, 230 F.3d 365, 367 (D.C. Cir. 2000) ("Tribes may conduct Class II ***gaming*** if the state in which they are located permits such forms of ***gambling*** and if the governing body of the tribe adopts a ***gaming*** ordinance that is then approved by the Chairman of the National Indian Gaming Commission, the agency created by Congress to implement IGRA. Class III ***gaming*** includes all ***gambling*** not covered by either Class I or Class II, including 'facsimiles' of Class II devices.") (internal citations omitted)
- *Confederated Tribes & Bands of the Yakama Indian Nation v. Locke*, 176 F.3d 467, 470 (9th Cir. 1999) ("IGRA creates three classes of ***gambling***: Class I includes social games for prizes of minimal value or traditional games; Class II includes bingo and non-banked, non-electronic card games; Class III includes all other forms of ***gaming***.")
- *United States v. Spokane Tribe of Indians*, 139 F.3d 1297, 1928-99 (9th Cir. 1998) ("In 1987 the Supreme Court held that states were not authorized to regulate ***gambling*** in Indian country. States disliked *Cabazon* and so the following year Congress passed IGRA. The new law gave states considerable say over ***gambling*** in Indian country, but the Act was not an unmitigated defeat for tribes. Rather, the law closely balanced the interests of states and tribes. IGRA divided games into three classes, each regulated

differently. Our concern is with class III ***gaming***—the most lucrative kind—covering all but social ***gambling*** and games like bingo.") (internal citations omitted)

- *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 794 (1st Cir. 1996) ("The State argues that the [Indian] ***Gaming*** [Regulatory] Act is not comprehensive in the conventional sense. This argument is not totally without merit; the ***Gaming*** Act has no application to tribes that do not seek and attain formal federal recognition, tribes that do not exercise jurisdiction over their territories, tribal lands located in states that proscribe Class II and III ***gaming*** activities altogether, or tribal lands on which federal law pretermits ***gambling***.") (internal citations omitted)
- *Cheyenne River Sioux Tribe v. S. Dakota*, 3 F.3d 273, 275 (8th Cir. 1993) ("The IGRA divides ***gaming*** into three classes: (1) class I ***gaming*** includes social ***gaming*** for minimal prizes and traditional Indian ***gaming*** conducted at ceremonies or celebrations; (2) class II ***gaming*** includes bingo, lotto, pull-tabs, punch boards, tip jars, and non-banking card games, as well as banking card games operated on or before May 1, 1988; and (3) class III ***gaming*** includes casino-type ***gambling***, parimutuel horse and dog racing, lotteries, and all other forms of ***gaming*** that are not class I or class II gaming.")
- *Tohono O'odham Nation v. Ducey*, 174 F. Supp. 3d 1194, 1197 (D. Ariz. 2016) ("In *California v. Cabazon Band of Mission Indians*, the Supreme Court held that states that permitted some form of ***gambling*** could not prohibit such ***gambling*** on Indian lands. In response, Congress passed the Indian ***Gaming*** Regulatory Act ('IGRA'), to give states 'some role in the regulation of Indian ***gaming***.'") (internal citations omitted)
- *New Mexico v. Dep't of Interior*, 269 F. Supp. 3d 1145, 1149 (D.N.M. 2014) ("In *California v. Cabazon Band of Mission Indians*, the United States Supreme Court held that absent Congressional authorization, States could not regulate or prohibit Indian tribes' on-reservation ***gambling*** activities. IGRA is a comprehensive statutory scheme that governs tribes' ability to conduct on-reservation ***gambling*** activities that Congress passed in response to *Cabazon*. One of IGRA's most important provisions gives States a role in regulating tribes' Class III ***gaming*** activities, which include lucrative slot machines and banked card games like blackjack.") (internal citations omitted)
- *Citizens Against Casino Gambling in Erie Cty. v. Stevens*, 945 F. Supp. 2d 391, 394 (W.D.N.Y. 2013) ("The statute provides for three classes of ***gaming*** on Indian land, each of which is subject to a different level of regulation. The SNI has repeatedly sought to conduct class III ***gaming*** on the Buffalo Parcel. This is the 'most heavily regulated and most controversial form of ***gambling***' under IGRA, and includes, *inter alia*, slot machines, games such as baccarat, blackjack, roulette, and craps, and sport betting, parimutuel wagering and lotteries.") (internal citations omitted)
- *Muhammad v. Comanche Nation Casino*, Case No. CIV-09-968-D., 2010 BL 254544, at *11 (W.D. Okla. Oct. 27, 2010) ("IGRA establishes three categories of ***gaming*** activity; Class III encompasses ***gambling*** activities such as 'slot machines, casino games, banking card games, dog racing, and lotteries.'")

- *Citizens Against Casino Gambling in Erie Cty. v. Hogen*, No. 07-CV-0451S., 2008 BL 144345, at *15 (W.D.N.Y. July 8, 2008) ("Class III ***gaming***, the category at issue in this case, is the 'most heavily regulated and most controversial form of ***gambling***' under the IGRA.")
- *New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 294 (E.D.N.Y. 2007) ("There is no exception under Article I, Section 9 of New York State Constitution or State ***gambling*** laws that allows a state-recognized Indian tribe to conduct ***gaming*** in New York.")
- *Citizens Against Casino Gambling in Erie Cty. v. Kempthorne*, 471 F. Supp. 2d 295, 304 (W.D.N.Y. 2007) ("Class III ***gaming***, the category at issue in this case, is the 'most heavily regulated and most controversial form of ***gambling***' under the IGRA.")
- *Santee Sioux Nation v. Norton*, No. 8:05CV147., 2006 BL 102089, at *2 (D. Neb. Sept. 26, 2006) ("Congress enacted the IGRA in 1988 to regulate ***gambling*** activities on Indian lands. IGRA divides ***gaming*** into three separate categories: Class I, Class II, and Class III.") (internal citations omitted)
- *Dewberry v. Kulongoski*, 406 F. Supp. 2d 1136, 1141 (D. Or. 2005) ("Class III ***gaming*** is the 'most heavily regulated and most controversial form of ***gambling***' under IGRA and includes forms of ***gaming*** that are not class I or II, such as slot machines, roulette, craps, and house-banked card games.")
- C*arruthers v. Flaum*, 365 F. Supp. 2d 448, 466 (S.D.N.Y. 2005) ("In response to *Cabazon*, Congress enacted IGRA. IGRA permits different types of ***gaming***, including casino ***gambling***, on Indian lands defined as lands within the limits of an Indian reservation or land which is held in trust by the United States for the benefit of an Indian tribe under specified conditions.") (internal citations omitted)
- *Cayuga Indian Nation of N.Y. v. Vill. of Union Springs*, 317 F. Supp. 2d 128, 152 (N.D.N.Y. 2004) ("The IGRA divides ***gambling*** into three classes that correspond with different levels of state regulation. Class I ***gaming*** includes social games for nominal prizes. This class of ***gaming*** is within the exclusive control of the tribes and is exempt from state control and IGRA regulations or prohibitions. Class II ***gaming*** is more explicitly defined as including bingo, cards and lotto. A tribe may engage in, or license and regulate, Class II ***gaming*** on Indian lands so long as 'such Indian ***gaming***' is located within a State that permits such ***gaming***, such ***gaming*** is not prohibited by federal law, and the governing body of the Indian tribe adopts an ordinance or resolution that is approved by the Chairman of the National Indian Gaming Commission. Class III ***gaming*** is defined under IGRA as simply 'all forms of gaming that are not Class I ***gaming*** or Class II ***gaming***.'") (internal citations omitted)
- *New York v. Shinnecock Indian Nation*, 280 F. Supp. 2d 1, 6 (E.D.N.Y. 2003) ("The Supreme Court addressed a state's ability to regulate Indian ***gambling*** in the paramount case *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987). In that case, the Court allowed two federally recognized tribes in

California to conduct high-stakes bingo on their reservation even though such activity violated California law. Congress, in response to Cabazon, enacted the Indian Gaming Regulatory Act ('IGRA'), 25 U.S.C. 2701, *et seq.*, in 1988. IGRA outlines which tribes may conduct ***gaming*** in the United States, where such ***gaming*** may occur, and the types of ***gaming*** that may occur.")

- *United States v. Santee Sioux Tribe of Nebraska*, 174 F. Supp. 2d 1001, 1004 (D. Neb. 2001) ("Congress enacted the IGRA in 1988 to regulate ***gambling*** activities on Indian lands.")
- *New York v. Oneida Indian Nation of New York*, 78 F. Supp. 2d 49, 51 (N.D.N.Y. 1999) ("The Indian ***Gaming*** Regulatory Act, 25 U.S.C. §§ 2701-2721 ('IGRA'), was passed by Congress in 1988, among other reasons, 'to provide a statutory basis for the operation of ***gaming*** by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.' The IGRA divides ***gambling*** into three classes that correspond with different levels of state regulation.")
- *United States v. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation*, 983 F. Supp. 1317, 1319 (C.D. Cal. 1997) ("IGRA establishes the regulatory framework within which all lawful Indian ***gaming*** is to be regulated. It divides various ***gambling*** activities into three categories (Class I, Class II and Class III) and provides different modes of regulation for each.")
- *Shakopee Mdewakanton Sioux Community v. Hope*, 798 F. Supp. 1399, 1409 (D. Minn. 1992) ("Because the legislative history suggests that Congress reserved class III for casino games and other high-stakes ***gambling***, it is not unreasonable to infer that Congress intended class III, casino-type ***gaming*** to include games in which the players play against the house and the house acts as banker—that is, to include house banking games.")
- *Cheyenne River Sioux Tribe v. South Dakota*, 830 F. Supp. 523, 525 (D.S.D. 1993) ("The IGRA divides ***gaming*** into three classes. Class I games are social games for prizes of minimal value or traditional forms of Indian ***gaming*** conducted at tribal ceremonies or celebrations. Class II ***gaming*** encompasses bingo and similar games including certain non-banking card games, as well as banking card games operated on or before May 1, 1988. All other forms of ***gaming***, including casino-type ***gambling***, pari-mutuel horse and dog racing, simulcasting, and lotteries are designated Class III ***gaming***.") (internal citations omitted)
- *United States v. Burns*, 725 F. Supp. 116, 122 (N.D.N.Y. 1989) ("Toward these ends, ***gaming*** is broken down into three categories under the Act. Class I ***gaming*** is social games for prizes of minimal value or traditional forms of Indian ***gaming*** engaged in as part of tribal ceremonies or celebrations. Class II ***gaming*** is bingo and similar games including 'pull-tabs, lotto, punch boards, tip jars and instant bingo,' and certain card games that are explicitly authorized by the state or not explicitly prohibited by the state. Class III ***gaming*** is all other types of ***gaming*** not listed in Class I or Class II,

including ‘banking card games’ such as blackjack, slot machines, and other casino-type ***gambling***.”) (internal citations omitted)

## STATE COURT DECISIONS

- *Commonwealth ex rel. Brown v. Stars Interactive Holdings (IOM) Ltd*., 617 S.W.3d 792, 813 (Ky. 2020) (“Statutes prohibiting ***gambling***, or ***gaming***, came to Kentucky via its Virginia parentage.”)
- *In re Voter Control of Gambling in Fla*., 215 So. 3d 1209, 1213 (Fla. 2017) (“For purposes of this section, ‘***gambling***’ and ‘***gaming***’ are ***synonymous***.”)
- *State ex rel. Walgate v. Kasich*, No. 11CV-13126, 2016 BL 546337, at *4 (Ohio C.P. Sept. 26, 2016) (“The Court finds the State has a legitimate interest in regulating casino ***gaming***. ***Gambling*** is a vice that may be limited, restricted, or banned by the State in its entirety, in order to preserve the public’s health and welfare.”)
- *Walsh v. William T. Spooner Post 17, Inc*., No. 7263-MA, 2013 BL 88088, at *3 (Del. Ch. Apr. 2, 2013) (“‘***Gaming***’ and ‘***gambling***,’ in statutes are ***similar in meaning*** and either one comprehends the idea that, by a bet, by chance, by some exercise of skill, or by the transpiring of some event unknown until it occurs, something of value is, as the conclusion of premises agreed, to be transferred from a loser to a winner.) (quoting Black’s Law Dictionary 808 (4th ed. 1968).”)
- *Town of Mount Pleasant v. Chimento*, 737 S.E.2d 830, 836 (S.C. 2012) (“the parties agree that ***gaming*** and ***gambling*** are ***synonyms***”)
- *South Carolina Law Enforcement Div. v. 1-Speedmaster S/N 00218*, 723 S.E.2d 809, 812 (S.C. Ct. App. 2011) (“As legal terms, ‘***gaming***’ and ‘***gambling***’ are the ***same***…”)
- *Ameristar Casino Vicksburg, Inc. v. Duckworth*, 990 So. 2d 758, 760 (Miss. 2008) (“Mississippi Code Annotated Section 75-76-5(l) states that ‘***gaming***’ or ‘***gambling***’ means ‘to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter.’”)
- *Sharp v. State*, 88 S.W.3d 848, 852 (Ark. 2002) (“In *Portis v. State*, 27 Ark. 360 (1872) this court stated that ***gaming*** or ***gambling*** is ‘the risking of money between two or more persons, on a contest or chance of any kind, where one must be loser and the other gainer.’”)
- *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360, 362 (Ark. 2001) (“This court has defined ***gaming*** or ***gambling*** as ‘the risking of money, between two or more persons, on a contest or chance of any kind, where one must be loser and the other gainer.’”)
- *In re Initiative Petition No. 363*, 1996 Ok. 122, 927 P.2d 558, 570 (Okla. 1996) (“both terms—***gaming*** and ***gambling***—have long been deemed ***synonymous*** with ‘games of hazard or skills’”)

- *Automatic Music & Vending Corp. v. Liquor Control Comm'n*, 396 N.W.2d 204, 208 (Mich. 1986) ("In accordance with the generally accepted view that the terms '***gaming***' and '***gambling***' are ***synonymous***, they are used ***interchangeably***. *See*, *e.g.*, *Black's Law Dictionary* (5th ed), which defines '***gaming***' as 'the practice or art of ***gambling***.'")
- *Bellamy v. State*, 347 So. 2d 419, 420 (Fla. 1977) ("As used in the context of the statute, the words '***gaming***' and 'game' are ***synonymous*** with ***gambling*** …")
- *State v. Agresta*, 250 A.2d 346, 350 (Conn. Cir. Ct. 1968) ("The word '***gaming***' is ***synonymous*** with ***gambling***.")
- *Farina v. Kelly*, 162 A.2d 517, 520 (Conn. 1960) ("The word '***gaming***' is ***synonymous*** with ***gambling***.")
- *Commonwealth v. Taber*, 145 A.2d 908, 912 (Pa. Super. Ct. 1958) ("'[G]ame' or 'gaming' as thus used in the title, does not mean playing games, but 'gambling.' This term has been defined innumerable times by this court, and the terms '***gaming***' and '***gambling***' are still ***synonymous*** in the dictionaries.")
- *People v. Lloyd*, 121 N.E.2d 329, 332 (Ill. App. Ct. 2d Dist. 1954) ("'bookmaking' and 'pool-selling' constitute ***gaming*** or ***gambling*** which the state may prohibit or may regulate and control")
- *Maine State Raceways v. LaFleur*, 87 A.2d 674, 678 (Me. 1952) ("***Gaming***, or ***gambling***, the two terms being ***synonymous*** as lexicographers and legal texts assert, *Webster's Universities Dictionary*; 12 *R.C.L.* 707, Par. 2; 24 *Am. Jur*. 398, Sec. 2; 38 *C. J. S*. 51, Sec. 1, has always been the subject matter of regulation by legislation in this state.")
- *City of Sterling v. Speroni*, 84 N.E.2d 667, 671 (Ill. App. Ct. 2d Dist. 1949) ("The terms ***gaming*** house and ***gambling*** house are ***synonymous***.")
- *Foley v. Whelan*, 17 N.W.2d 367, 370 (Minn. 1945) ("The words 'game' and 'gamble' and '***gaming***' and '***gambling***,' respectively, are taken as ***synonymous***.")
- *Gray v. State*, 172 S.W.2d 722, 724 (Tex. Civ. App. 2d 1943) ("At the outset we may safely assume that the statute uses the words '***gaming***' and '***gambling***' ***interchangeably*** and that '***gaming*** house and '***gambling*** house' are ***synonymous***.")
- *Brown v. Bd. of Police Commissioners of Los Angeles*, 136 P.2d 617, 619 (Cal. Dist. Ct. App. 1st 1943) ("***Gaming***, which is ordinarily ***synonymous*** with ***gambling*** (24 Am. Jur. 398), is specifically prohibited by law in this state.")
- *Ellis v. State*, 162 S.W.2d 407, 408 (Tex. Crim. App. 1942) ("***gaming***, ***gambling*** and betting or wagering are used ***synonymously***")
- *State v. Brown*, 20 S.E.2d 286, 291 (N.C. 1942) ("'***Gaming***' and '***gambling***' in a criminal sense are ***synonymous***.")
- *People v. Erickson*, 13 N.Y.S.2d 997, 1005 (N.Y.C. Magis. Ct. 1939) ("The judges of our own State have often held '***gaming***' and '***gambling***' as ***synonymous***.")
- *Chappell v. Stapleton*, 198 S.E. 109, 110 (Ga. Ct. App. 1938) ("Slot machines are designed and used for ***gaming*** and ***gambling*** purposes, and ordinarily can not be used for any lawful purpose.")

- *Commonwealth v. Theatre Adver. Co*., 190 N.E. 518, 521 (Mass. 1934) ("In a word '***gaming***' is used ***synonymously*** with the word '***gambling***' in our decisions and statutes.")
- *In re Wlliams*, 16 P.2d 172, 173 (Cal. Dist. Ct. App. 2d 1932) ("The terms '***gaming***' and '***gambling***,' in their criminal sense, are ***synonymous***. They have been used ***interchangeably*** …")
- *State v. Mint Vending Mach. No. 195084*, 154 A. 224, 226 (N.H. 1931) ("'***Gaming***' and '***gambling***' in their criminal sense are ***synonymous*** and have been used ***interchangeably*** in our statutes.")
- *In re Pierotti*, 184 P. 209 (Nev. 1919) ("At common law '***gaming***' or the ***synonymous*** term '***gambling***,' was not in itself unlawful, and is not now *eo nomine* a crime, unless so made by statute.")
- *Commonwealth v. Collier*, 204 S.W. 74, 75 (Ky. 1918) ("***Gaming*** and ***gambling*** are ***synonymous*** terms … There is no force in the contention that there is a distinction between 'gaming' and 'gambling.'") (cleaned up)
- *McCall v. State*, 161 P. 893, 895 (Ariz. 1916) ("'***Gaming***' or '***gambling***' is defined to be: 'The risking of money or other property between two or more persons on a contest of chance of any kind where one must be the loser and the other the gainer.'")
- *State v. Frederick*, 109 N.E. 747, 748 (Ind. 1915) ("A consideration of the several sections of our statute relative to gaming and gambling convinces us that the legislature has used the words '***gaming***' and '***gambling***' ***interchangeably*** …")
- *City of Moberly v. Deskin*, 155 S.W. 842, 844 (Mo. Ct. App. Kan. City 1913) ("In legal significance the term '***gaming*** device' and '***gambling*** device' are ***synonymous***.")
- *State v. Leaver*, 157 S.W. 821, 822 (Mo. Ct. App. Kan. City 1913) ("The term 'any gaming table' used in the latter statute means any table that may be used for playing games of chance for money or property and the offense consists in using such table 'for the purpose of gaming,' the word ***gaming*** being employed as the ***synonym*** of ***gambling***.")
- *Bentler v. Commonwealth*, 136 S.W. 896, 898 (Ky. 1911) ("'***gaming***' … and [] '***gambling***' … are ***synonymous***, and are used ***interchangeable*** [sic] in the statute and in the opinions of this court")
- *State v. Shotts*, 128 S.W. 245, 246 (Mo. Ct. App. Kan. City 1910) ("***Gaming*** is ***defined as***: 'The act or practice of playing games for stakes or wagers; ***gambling***; the playing at any game of hazard.' [Black's Law Dictionary.] … When '***gaming***' is spoken of in a statute as indictable it is to be regarded as ***convertible*** with ***gambling***, *i.e*., staking money on a game involving more or less chance.")
- *State v. Shanklin*, 97 P. 969, 970 (Wash. 1908) ("The terms '***gaming***' and '***gambling***' in the administration and interpretation of criminal laws are usually regarded as ***synonymous***.")

- *Opinion of the Justices*, 73 N.H. 625, 63 A. 505 (1906) ("The terms '***gaming***' and '***gambling***' are in their criminal sense ***synonymous***, and have been used ***interchangeably*** in our statutes.") (internal citation omitted)
- *Hayes v. Palmer*, 21 App. D.C. 450, 458 (D.C. Cir. 1903) ("'***Gaming***' and '***gambling***' mean s***ubstantially the same*** thing…")
- *Lyman v. Brucker*, 56 N.Y.S. 767, 770 (Sup. Ct. 1899) ("The manifest purpose of the legislature in its various enactments on the subject of ***gambling*** and ***gaming***, which are ***synonymous*** terms, was to carry out the plain requirements of the Constitution and to make unlawful all games of chance by which money or other articles of value may be lost or won.")
- *In re Smith, Petitioner*, 39 P. 707, 708 (Kan. 1895) ("In general, the words '***gaming***' and '***gambling***,' in statutes, are ***similar in meaning***, and either one comprehends the idea that by a bet, by chance, or by the transpiring of some event unknown until it occurs, something of value is, as the conclusion of premises, agreed to be transferred from a loser to a winner.")
- *Mace v. State*, 22 S.W. 1108 (Ark. 1893) ("the terms ***gaming***, betting and ***gambling*** may, in most instances, be used ***interchangeably***")
- *State v. Dyson*, 39 Mo. App. 297, 301 (Kan. City 1890) ("The word '***gambling***' is ***interchangeable*** with that of '***gaming***'—they are ***equivalent*** words—having the same meaning and signification. … The supreme court, in *State v. Nelson*, 19 Mo. 393, expressly held the terms '***gaming***' and '***gambling***' to be ***synonymous***.")
- *Evans v. Cook*, 11 Nev. 69, 75 (1876) ("The word used in the statute of Anne is '***gaming***,' and that used in Cook's answer and affidavit is '***gambling***;' but they are defined and treated as ***synonymous***.")
- *State v. Nelson*, 19 Mo. 393, 395 (1854) ("The statute prohibits any such gambling device to be set up or used for the purpose of gaming: here the averment is for the purpose of gambling. In looking into the statute on this subject, it will be seen that the legislature used the words ***gambling*** and ***gaming*** as ***synonymous*** terms.")

## Appendix B

A. “Gaming” means any agreement, contract, or transaction, including any swap, that is based on, references, or is determined, in whole or in part, by the outcome, occurrence, non-occurrence, score, margin, statistics, performance, ranking, or other result of:

    1. A contest or event, including any game, sporting event, athletic contest, tournament, match, race, season, or similar exhibition; or

    2. A game of chance or mixed chance and skill, including any traditional casino-style game or activity, whether conducted in a physical, electronic, digital, internet-based, or simulated environment (including iGaming), such as card games, table games, slot-style or randomized games, or other gaming activities in which results are determined by random number generation, house-banked outcomes, or player participation under established rules.

B. “Gaming” includes:

    1. any proposition, index, metric, or contingency derived from or related to such contests, events, or games, and applies where one or more participants risk money or other consideration on such outcome or result;

    2. without limitation, contracts or transactions referencing professional, collegiate, amateur, Olympic, youth, electronic, virtual, or simulated contests, events, or games;

    3. any agreement, contract, transaction, or swap that involves, relates to, or references the outcome, occurrence, non-occurrence, score, margin, statistics, performance, ranking, or other result of a game, sporting event, athletic contest, tournament, match, race, season, or similar exhibition, including any proposition or contingency derived from such event or competition, where market participants risk money or other consideration on that result. Gaming includes contracts on professional, collegiate, amateur, Olympic, youth, electronic, and simulated sporting events or contests. A contract constitutes gaming regardless of whether it is described as serving predictive, informational, commercial, or hedging purposes, and regardless of whether it is listed on a registered entity.

C. An agreement, contract, or transaction constitutes gaming without regard to its stated purpose, including where characterized as predictive, informational, commercial, or hedging in nature, and without regard to whether it is listed, traded, or cleared by or through a registered entity.

The Commission should also provide illustrative examples stating that prohibited sports-event contracts include, at minimum:

1. Single-game winner or loser markets;

2. Championship, tournament, playoff, bracket, bowl, cup, title, and race outcomes;

3. Daily or recurring sports-event markets;

4. Player, team, and in-game proposition contracts;

5. Contracts tied to points, touchdowns, goals, strikeouts, rebounds, penalties, innings, quarters, periods, possession outcomes, injuries, disciplinary actions, or comparable event-specific statistics;

6. Season-long standings, win totals, rankings, awards, or performance-based outcomes; and

7. Any substantially similar sports-related proposition, contingency, index, or metric.