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Kalshi and *Polymarket*: "Gambling" or "Financial Instruments"?

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Back in the day — and maybe not as far back as some would like to think — the mob ran gambling operations all over the place and occasionally got prosecuted for it. But gambling itself wasn't the crime. It's perfectly legal for a bunch of guys, even bad guys who do plenty of other illegal things on the side, to run a poker game for money, even a high-stakes one. What was illegal, and still is federally, was "the house" taking a cut — a "rake," in the lingo — no matter who won. Nowadays, though, many states have legalized gambling.

Now along comes Kalshi and Polymarket. If you don't know them, they're usually described as "prediction market platforms," which is really just a polite way of saying betting parlors. Users buy and sell contracts tied to real-world outcomes: an election, an economic report, a ballgame, even the weather. Instead of betting against a house, they trade against each other, so the price of a contract reflects what the crowd of bettors collectively think will happen. Every "yes" needs a "no" on the other side. The platform doesn't take the bet; it charges a fee, a percentage of the wager, though "wager" is apparently a dirty word to this regulatory crowd.

That may seem like an odd place to begin a discussion about financial markets. But it is really the whole ball game here. Are **Kalshi** and **Polymarket** gambling operations, or are they legitimate financial markets? The honest answer isn't likely to satisfy anybody: in important ways, they are both.

Kalshi and Polymarket, at least in their U.S. form, operate inside the federal derivatives framework. Their lawyers argue that an event contract is a financial instrument, traded on a regulated exchange, rather than a bet. Many states aren't buying it. Calling something an "event contract," they say, doesn't make it stop being a wager just because a lawyer wrote it up nicely. That doesn't resolve the basic question, of course. It just tells you who is fighting over the right to answer it.

Consider what happens on the screen. You can put money on whether a team wins, a candidate wins, the Fed raises rates, or Bitcoin hits a particular number. If the proposition turns out to be true, you get a dollar. If it doesn't, you get nothing. There is no roulette wheel and no bookie taking your action in the traditional sense. The price moves as information comes in. Fine. But if I pay 55 cents for a contract that pays a dollar if the Yankees win and nothing if they lose, what have I actually done? Call it a contract, a position, or a fancy event derivative. If I have no real economic exposure to the game, it is hard to explain how that differs from a bet down at the corner bookie.

A real financial derivative usually exists because someone has actual economic risk to manage. A farmer hedges corn. An airline hedges fuel. A company hedges currency exposure. There is a commercial reason behind the transaction beyond wanting to make money if something happens. Prediction markets can serve that function too, at least in theory. A business might hedge a politically driven outcome. Investors might use the price as a signal of what the crowd believes. But what about the person who is not hedging anything at all? What about the millions of people simply trying to guess correctly whether the Giants beat the Cowboys on Sunday? That is not much of a hypothetical anymore.

And it is no longer just a theoretical question. A growing number of states—among them Massachusetts, Nevada, Michigan, New York, and Wisconsin—have gone to court against Kalshi, Polymarket, or both. Their argument is essentially the same: whatever these companies call their products, when a customer puts money on whether a football team will win, the customer is gambling. The companies respond that the contracts are federally regulated financial instruments, and the CFTC has taken their side in the fight over who gets to regulate them.

But Washington State has pushed the issue to its immediate conclusion. Following a lawsuit by its Attorney General, a state judge ruled that Kalshi's contracts are an unlicensed gambling operation and ordered the company to aggressively scale back. By mid-August 2026, Kalshi was legally forced to erect digital walls—geofencing Washington residents entirely out of contracts involving sports, politics, and entertainment.

This has produced the unusual spectacle of prediction-market companies saying, “We are financial markets,” states saying, “No, you are gambling operations,” and the federal government saying, in effect, “The states cannot regulate what federal law permits.” The question is no longer simply what these companies are doing. It is who gets to decide what they are doing.

Then things got stranger. In April, the CFTC (along with the Justice Department) charged Gannon Ken Van Dyke, an active-duty Army Special Forces master sergeant, with insider trading on Polymarket. **The civil complaint** and the **criminal indictment** say that he had classified information about a U.S. operation involving Venezuela's Nicolás Maduro and used it to buy more than 436,000 “Yes” shares on whether Maduro would be ousted by January 31, 2026. According to the allegations, Van Dyke stood to make more than $404,000.

There is something almost cinematic about a person with military secrets choosing to trade on them rather than simply tipping off a friend. But the legal point is more interesting. The CFTC charged Van Dyke under what is often called the “Eddie Murphy Rule,” a reference to the movie *Trading Places*, in which Murphy's character intercepts a government crop report and uses it to trade orange-juice futures. Congress eventually prohibited government insiders from trading on that kind of material nonpublic information. Now the CFTC is testing that rule in the prediction-market world.

The irony is fairly obvious. The people defending prediction markets say these are real financial markets, and the *Van Dyke* case, in one important respect, proves their point. The government treated the transaction as an insider-trading case. But that just raises another problem. What happens when the person who knows the answer is also allowed to trade on the question? That is not just Polymarket's problem. It is a problem for any market where the event being traded can generate valuable secret information before the public learns it.

The companies resist the gambling label for good reasons. Gambling can mean state licensing, age restrictions, and responsible-gaming rules. Financial markets operate in a different regulatory universe. Still, the law cannot decide what something is merely because a company gives it a more acceptable name. Hedging real economic risk is one thing. Putting $100 on whether a football team wins tonight is something else. A market pricing inflation expectation may tell us something useful. A market offering increasingly exotic propositions because they are entertaining begins to look much more like a casino floor.

There is another wrinkle. Old-fashioned gambling had an obvious house. The casino took the bet, structured the odds, and made money over time. Prediction markets say there is no house; traders deal with each other while the exchange merely facilitates the transaction. That is a nice story, except that modern markets need liquidity. Liquidity means professional market makers quoting bids and offers, managing inventory, and trying to profit from spreads and price movements. There is nothing improper about that. It is how financial markets work. But it does make the claim that there is “no house” a little harder to swallow.

So perhaps we are back where we started. The old gambling operation had a house, the house took its cut, and everyone knew what they were doing, even when the law did not like it. Kalshi and Polymarket have created something that looks different on paper: no traditional house taking the other side, but an exchange, counterparties, prices, liquidity, contracts, and regulators. Strip away the vocabulary, though, and picture a person on a couch putting $100 on the Giants beating the Cowboys. That person is making a prediction and taking a financial risk on an uncertain outcome. Call it whatever you want.

Maybe the real question is not whether these platforms are "really" gambling or "really" markets, but how people use them. They can aggregate information and allow genuine hedging of real risk. They can also offer a remarkably efficient way to bet on a favorite team. The courts will eventually draw a legal line, but a broader question may remain: should the law focus on what a product is called, how it is structured, or what people actually do with it?

A rose by any other name would smell as sweet. And a bet by any other name may still be a bet.

Criminal Indictment Van Dyke
CFTC Complaint Van Dyke
CFTC Complaint New York

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