CLIENT ALERTS & INSIGHTS

Prediction Markets and Public Power: Senate Restricts Trading, but Constitutional Questions Linger

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Authors: Kevin B. Frankel, Holly F. Gross, William E. Walsh, Yesul ("Kristin") Lee, Bianca Smith

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Key Takeaways

- The U.S. Senate has unanimously banned its members, officers and staff from trading on prediction markets, responding to concerns about insider trading and public trust, but the rule largely formalizes restrictions already adopted by major trading platforms.
- This move signals heightened scrutiny of event-based derivatives and prediction markets, with the potential for broader legislative or regulatory action that could impact not just Congress but also the executive branch and market platforms. Legal and constitutional questions about the scope and enforceability of such bans remain unresolved.
- Organizations and individuals involved in prediction markets should closely monitor evolving federal and state rules, review compliance practices and anticipate further restrictions or enforcement actions as Congress and regulators continue to address insider trading and market integrity concerns.

Confronted with public controversy surrounding insider trading in prediction markets, the United States Senate has taken action both symbolically powerful and substantively modest: it has prohibited its own members, officers and staff from participating in prediction markets. S. Res. 708, sponsored by Senator Bernie Moreno (R-Ohio), amends the Standing Rules of the Senate to prohibit Senators from trading on prediction markets. The Resolution amends rule XXXVII to prohibit members of the United States Senate from entering into or offering to enter into an agreement, contract, swap or transaction that provides for any purchase, sale, payment or delivery of an excluded commodity, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), that is dependent on the occurrence, nonoccurrence or the extent of the occurrence of a specific event or contingency. The action was amended to include not just members, but also officers and employees of the Senate. The Senate called upon the House, executive branch and judicial branch to establish similar restrictions.

The House of Representatives is expected to follow with similar action. Unlike the Senate's rules, the House must adopt a rules package each Congress.

At first glance, the development appears to mark a decisive turn in Congress's approach to the regulation of event-based derivatives platforms such as Polymarket and Kalshi. A closer look, however, suggests a more nuanced reality-one in which institutional self-protection, reputational triage and unresolved constitutional tensions all play central roles.

Both chambers of Congress have proposed numerous bills on the topic including The Ethics in Government Act (EIGA), The Stop Trading on Congressional Knowledge (STOCK) Act, The Public Integrity in Financial Prediction Markets Act of 2026 and The End Prediction Market Corruption (EPMC) Act.

The legislative interest in executive branch prohibitions is highlighted through The End Prediction Market Corruption Act, S. 4017, which would prohibit the President, Vice President and members of Congress by law from trading event contracts. The legislation would bar senior executive branch officials from trading event contracts involving matters in which they "participate personally and substantially." The EMPC bill also would direct the Commodity Futures Trading Commission to issue a rule to "restrict the inappropriate use of material nonpublic information [MNPI], in breach of an express or implied duty not to use or disclose such MNPI, as a means of making a profit through" the trading of event contracts. Introduced on March 5, 2026, The EMPC is currently pending before the Senate Committee on Agriculture, Nutrition and Forestry.

I. The Illusion of Novelty

Despite headlines framing the Senate's self-prohibition on trading as a regulatory breakthrough, the practical effect on prediction markets themselves is limited. Negative public sentiment and regulatory saber rattling were followed by major platforms making moves to restrict political insiders from trading. Both Kalshi and Polymarket, for example, have already adopted internal compliance rules barring politicians from trading on markets tied to their own campaigns or official actions.

In that sense, Congress is not leading market reform so much as ratifying it. The Senate's rule does not materially expand the scope of prohibited conduct beyond what leading platforms had already begun to enforce. Rather, it shifts the locus of restriction from private governance to public ethics rules-an important distinction, but not a transformative one.

II. Crisis as Catalyst

If the Rule's substance is incremental, its timing is not. The Senate's rapid and unanimous action is best understood against the backdrop of a growing public-relations crisis surrounding prediction markets and insider trading. A Wall Street Journal analysis of Polymarket found that 0.1% of accounts, totaling less than 2,000 users, secure 67% of the platform's profits, while over 70% of users lose money. This indicates that sophisticated traders and algorithms dominate the market, with "whales" capturing nearly half a billion dollars in gains. The analysis concluded that the majority of Kalshi users are also in the red. The data supports the theory that it is likely that insiders and market manipulators are profiting off of these platforms.

That crisis crystallized in the United States Department of Justice ("DOJ") prosecution of an Army Special Forces soldier accused of using classified information to place bets on the capture of Venezuelan President Nicolás Maduro, allegedly turning roughly $33,000 into more than $400,000 in profit. The case

-widely described as the first insider-trading prosecution involving a prediction market-highlighted the obvious risk: that access to nonpublic government information can be monetized not only through securities markets, but through event contracts tied to geopolitical outcomes. And of course, problematic insider trading is not limited to event contracts: more traditional markets, such as crude oil futures contracts, have seen trading conspicuously timed in advance of major events.

The impact of these optics is difficult to overstate. Large trades, sometimes minutes before events like attacks on Iran or other military operations, undermine public confidence that the markets offer a fair playing field, particularly when the apparent insider trades or market manipulation are not followed by prosecution. Even where conduct was already unlawful under existing fraud and misuse-of-information theories, the spectacle of government insider wagering on a covert military operation created a narrative of systemic vulnerability.

III. The Candidate Problem and Symbolic Enforcement

Complicating the narrative further are the relatively minor private enforcement actions brought by the platforms themselves. In April 2026, Kalshi-pursuant to its obligation as a CFTC-regulated Designated Contract Market which is required to police its own markets-suspended and fined three U.S. congressional candidates for "political insider trading" by betting on their own electoral races in Minnesota, Texas and Virginia. Yet the scale of these transactions, often in the range of $50 to $100, suggests expressive conduct rather than genuine profiteering.

Some candidates have explicitly framed their participation as political protest or demonstration. Minnesota candidate for the 2nd Congressional District, Matt Klein, has reportedly coupled trading activity with advocacy for a statewide regulation on prediction markets. Klein acknowledged that he traded a small amount on the outcome of his own election and agreed to pay a fine of $539.85 and serve a five-year suspension.

In a statement on X, Klein said, "I had never wagered on a predictions market previously. I was curious about how it worked. I set up an account and bet $50 of my own funds that I would win the primary. I was informed in March of 2026 that this was a violation of platform rules . . . This was a mistake, and I apologize." Klein added, "My experience, like many other Minnesotans, points to the need for clearer rules and regulations for these types of markets."

Kalshi determined that Mark Moran, who was a candidate for Virginia's Democratic primary for the Senate before switching to run as an independent, traded in two markets related to his campaign. "The first was a market on individuals who would run for public office in 2026. Then, once [Moran] announced himself as a candidate for the democratic primary election, he again traded on his own candidacy."

Moran, in a statement on X, said "I traded $100 on myself, knowing this would happen (also knowing I wouldn't be vying for the democratic nomination) and the attention it would create to highlight how this company is destroying young men and as Senator I will go after Kalshi and impose significant penalties on them - 25% - a vice tax - to pay down our national debt."

These episodes reveal an unresolved ambiguity: whether participation in prediction markets by political actors should be understood as corruption, speech, or some hybrid of the two.

IV. Separation of Powers and the Unanswered Questions

The Senate's rule is only the beginning. More consequential legal questions will arise if Congress passes legislation to extend similar prohibitions to the executive branch.

Senator Tammy Duckworth (D-IL) in her support of pending legislation on this topic, highlighted the need to curb insider trading, stating, ". . . Congress must lead by example to help restore trust and integrity in government."

Duckworth is a strong advocate for a participation ban on all members of Congress, and by extension, executive branch officials and their staff. Such legislation would immediately implicate separation-of-powers concerns. Unlike internal congressional ethics rules, which are grounded in each chamber's constitutional authority to govern its own proceedings, restrictions imposed on executive officials raise more difficult questions about the scope of legislative control over executive conduct, particularly outside the core domains of bribery or financial disclosure.

Sen. Kirsten Gillibrand (D-N.Y.) added, "[elected officials] should be working for the people they represent, not lining their own pockets with insider information. Americans deserve financial markets that are fair, transparent, and not tilted in favor of those with privileged access. This [bill] puts guardrails in place to protect consumers, prevent insider trading, and hold prediction market platforms to standards of integrity. "

Courts may need to confront thorny issues, including whether: (1) participation in prediction markets constitutes protected economic activity; (2) restrictions can be justified as anti-corruption measures analogous to insider trading prohibitions in securities law; and (3) such limits impermissibly interfere with executive branch functions or personnel.

The answers are far from clear, particularly given the hybrid nature of prediction markets, which sit at the intersection of commodities regulation, gambling law and First Amendment doctrine. Additional layers of complication come into play if a future Congress were to attempt to extend trading prohibitions to family members of executive officials, such as Donald Trump Jr., who is an advisor to both Polymarket and Kalshi.

V. Structural Incentives and Political Economy

Finally, any discussion of executive-branch reform must contend with political economy realities. The involvement of politically connected actors in the prediction market ecosystem, combined with broader partisan disagreements over whether such markets should exist at all, suggests that reform efforts will be uneven at best and will likely be impacted by the results of this year's election.

Indeed, some lawmakers have already moved beyond insider trading concerns to question the legitimacy of prediction markets as a category, likening them to gambling and calling for outright bans. Others, by contrast, view them as valuable information aggregation tools that can improve forecasting and market efficiency.

VI. Conclusion

The Senate's unanimous vote is best understood not as the culmination of a regulatory project, but as its opening move. It reflects a convergence of proclaimed conflict-of-interest management and reputational pressure, technological novelty and institutional self-interest, rather than a settled theory of how prediction markets should be governed.

States may respond through the enactment of parallel state legislation or through enforcement actions initiated by gaming officials. Recent regulatory postures indicate that some gaming authorities are evaluating prediction market activity under conventional illegal gambling frameworks. However, an expansion over certain prediction market activities, whether under express legislative authority or through asserted regulatory interpretation, may also be on the horizon.

The harder questions remain ahead. Whether Congress can-or should-extend these restrictions beyond itself will test not only the boundaries of insider trading law, but the structural limits of legislative power in an era where information itself has become a tradable asset. And ultimately, it will take aggressive enforcement of existing insider trading principles by executive branch agencies like the CFTC and DOJ to restore public confidence in fair predictive markets.

The Benesch team will continue to monitor these proceedings. For more information, contact the State Attorneys General Investigations & Enforcement Practice Group.