TEXAS
POLICY RESEARCH

September 15th, 2026

Chairman Hughes and Members
Senate Committee on State Affairs
Texas Senate

RE: Written Testimony on Fair Closing Gambling Loopholes

Chairman Hughes and Members of the Committee,

Thank you for the opportunity to provide comments regarding prediction markets, event contracts, and Texas gambling law.

Texas Policy Research Action begins from a simple principle: competent adults should generally be free to make their own decisions and live with the consequences. Government's proper role is to enforce voluntary contracts, punish fraud and coercion, protect individual rights, and provide neutral rules that apply equally. It should not criminalize peaceful conduct merely because lawmakers believe adults may make unwise, distasteful, or financially risky choices.

That principle should guide the Legislature's consideration of prediction markets. Prediction markets allow participants to buy and sell contracts whose value depends upon whether a specified event occurs. Contracts may concern elections, legislation, economic indicators, government actions, sporting events, weather, entertainment, geopolitical developments, or other measurable outcomes. A contract trading at 63 cents generally reflects a market estimate that the event has approximately a 63 percent chance of occurring, with a correct contract ultimately paying one dollar and an incorrect contract expiring without value.

These markets serve more than one purpose. Some participants use contracts to hedge an identifiable financial risk. A farmer, for example, may take a position that pays if rainfall falls below a certain level, partially offsetting the consequences of a poor growing season. Businesses may use event contracts to manage exposure to regulatory decisions, commodity disruptions, interest-rate changes, or other future events.

Other participants use prediction markets to speculate, make money, test their judgment, or be entertained. That distinction may help explain a product, but it should not determine whether a voluntary transaction between informed adults is criminal.

Prediction markets also produce information. Participants must put money behind their expectations rather than merely offer an opinion. The resulting prices combine dispersed knowledge, incentives, and competing judgments into a continuously updated probability. That does not make prediction markets infallible. Thin markets can be volatile. Participants can be mistaken. Wealthy traders may temporarily distort prices. Insiders may possess advantages. A price reflects the judgment of market participants, not a guarantee about the future.

The same limitations apply in different forms to polling, securities prices, expert forecasts, and other sources of public information. The proper response is to understand and disclose those limitations, not to suppress the information.

The Committee's charge describes the growth of prediction markets as an exploitation of federal law intended to circumvent Texas gambling prohibitions. That framing assumes the conclusion before the underlying legal and policy questions have been resolved.

Some prediction markets plainly resemble gambling. A contract based on the winner of a sporting event may be economically similar to a traditional sports wager. Calling it a derivative does not automatically change its practical function. But calling an activity gambling does not resolve the more fundamental question: why should Texas prohibit competent adults from voluntarily participating?

Adults routinely accept financial risk. They trade options, purchase volatile securities, invest in speculative assets, open businesses, enter contests, and spend money on entertainment. Texas also operates and promotes its own lottery. Government cannot credibly claim that risking money on an uncertain outcome is categorically intolerable while advertising a state-run gambling product and collecting its proceeds.

Personal responsibility requires allowing adults to make choices that government officials may regard as imprudent. Some participants will make money. Others will lose. Liberty would have little substance if it protected only those decisions legislators considered wise. The Legislature should therefore reject the premise that prediction markets are principally a loophole that must be closed. It should instead determine whether Texas law unnecessarily criminalizes peaceful activity and whether neutral rules can address demonstrable harms without prohibiting adult choice.

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The strongest case for government intervention arises when one person violates the rights of another. Fraud, theft, manipulation, misuse of customer funds, refusal to honor contracts, deceptive advertising, and trading based on stolen or unlawfully obtained information are appropriate subjects of law. So are coercion and access by minors who lack legal capacity to enter certain transactions.

Those rules should apply consistently. Fraud is fraud whether it occurs through a prediction market, securities exchange, insurance transaction, lottery vendor, or ordinary business contract. Government should target the wrongful conduct rather than condemn an entire platform or industry.

Platforms should disclose how contracts work, what fees they charge, how customer assets are held, when trading may be suspended, how an outcome will be determined, how disputes will be resolved, and what happens if an event is canceled or becomes impossible to measure. They should not market speculation as guaranteed income or conceal that a participant may lose the full value of a position. Such requirements help adults make informed decisions. They do not substitute government judgment for the individual's decision. Critics also argue that prediction markets are becoming another form of the online attention economy. Platforms have incentives to create provocative markets, encourage frequent participation, and transform news, politics, entertainment, or tragedy into opportunities for speculation. Those concerns deserve public debate. They do not necessarily justify prohibition.

Many lawful products and media platforms compete for attention. Sports, video games, social media, financial news, streaming services, and political campaigns all use design and marketing to keep people engaged. Individuals, families, churches, civic organizations, and commentators should be free to criticize those practices and encourage healthier behavior. Cultural criticism does not automatically create a legitimate government power to prohibit peaceful adult conduct. Not every objection to a market requires a regulatory answer. A product may be shallow, addictive, ugly, or socially corrosive without violating anyone's rights. A free society leaves room for persuasion, personal discipline, private rules, and voluntary alternatives.

Political prediction markets raise additional constitutional concerns. Contracts concerning elections, ballot measures, legislation, judicial decisions, nominations, and government actions do not merely transfer money. They also produce and communicate information about political expectations.

Each trade contributes to a published probability. The trader expresses a judgment, the platform combines those judgments into a market price, and the public receives that information. A prohibition targeting contracts because they concern political subjects could therefore burden the creation, publication, and receipt of political information.

Courts have not conclusively determined every First Amendment question presented by prediction markets. Trading contains both conduct and expressive elements, and government may regulate financial transactions in ways it could not regulate ordinary speech. Nevertheless, the Legislature should take seriously the constitutional implications of singling out election or political contracts for prohibition.

This approach is consistent with the Texas Liberty Compact, Texas Policy Research Action's legislative agenda for restoring self-government, accountability, and liberty in Texas. Its call to Protect Free Speech and Digital Expression recognizes that speech does not lose constitutional protection merely because it occurs through a digital platform. The Compact opposes blanket bans on lawful digital platforms, requires regulation to be narrowly tailored to demonstrated harms, and prioritizes targeted consumer-protection measures over broad controls on lawful expression. A prohibition on political prediction markets would run contrary to those principles by suppressing an emerging source of political information rather than targeting fraud, manipulation, or other identifiable misconduct.

Polling can influence voters. Endorsements can influence voters. News coverage can influence voters. A prediction-market price may do the same. Government should not suppress a source of political information merely because officials fear that people may consider it when forming opinions. That does not render political markets immune from neutral rules. Fraud, manipulation, foreign interference, and the misuse of confidential information remain legitimate concerns. Regulation should address those harms without banning an entire medium of political forecasting.

Insider activity requires particular care. A military employee should not be permitted to misuse classified information for personal profit. A government official should not exploit confidential plans. An employee should not steal proprietary information from a business. Those acts are wrong because the information was unlawfully obtained or misappropriated, not simply because the person made an accurate prediction.

The state should preserve that distinction. Information asymmetry exists throughout economic life. One trader may know more, research more carefully, or reach a better conclusion than another. Markets cannot function if every informational advantage is treated as criminal. Liability should depend upon a violation of a legal or contractual duty, theft, fraud, manipulation, or misuse of protected information.

Candidates and public officials also present potential conflicts. A candidate who trades against his own success could gain a financial incentive to lose. An officeholder may be able to influence the government action underlying a contract. Election administrators may possess nonpublic information affecting settlement.

Those risks do not require banning all political contracts for all adults. Platforms are private entities and may establish their own participation rules. They may prohibit candidates, campaign staff, government employees, athletes, coaches, or others with a direct relationship to the underlying event. Individuals who voluntarily accept those terms should be expected to follow them.

Where government establishes additional restrictions, it should identify the specific conflict. A narrowly tailored rule concerning the misuse of confidential government information or a participant's ability to control an outcome is preferable to a general prohibition. Disclosure may also address some conflicts more effectively than a ban. If a candidate or officeholder takes a position in a political market, public disclosure could allow voters to evaluate that conduct for themselves.

The distinction between betting on one's own success and betting against it may also matter. A candidate purchasing a contract that pays if he wins may be expressing confidence. A candidate purchasing a contract that pays if he loses may create an incentive to undermine his own campaign. The Legislature should not assume those positions create identical risks. Even then, criminal law should remain a last resort. Private platform rules, disclosure, campaign-finance law, ethics requirements, and prohibitions on fraud or official misconduct may address the relevant harm without criminalizing ordinary market participation.

Developments in other states show the danger of a prohibition-first approach. Minnesota enacted a sweeping law criminalizing participation in broad categories of prediction markets. The law reportedly reaches sports, elections, disasters, casino games, deaths, and actions by individuals or groups. Earlier language concerning weather was removed after lawmakers recognized that it could criminalize agricultural hedging.

That example demonstrates how easily broad prohibitions can reach legitimate financial and commercial activity. It also illustrates the consequences of criminalizing conduct without identifying a victim. A person entering a voluntary contract with another willing participant should not face jail merely because the government disapproves of the transaction.

The Minnesota law has generated immediate litigation involving the Commodity Futures Trading Commission and questions of federal preemption. Courts are now being asked to determine whether states may prohibit products traded through federally regulated contract markets. New York and other states are engaged in similar disputes with prediction-market operators.

Texas should learn from those conflicts before creating its own.

The CFTC maintains that federally registered exchanges fall within its exclusive jurisdiction under the Commodity Exchange Act. States traditionally exercise authority over gambling within their borders. Prediction markets sit near the contested boundary between those systems.

Texas should defend its lawful authority, but federalism should not become a pretext for expanding state power over individuals. The question is not simply whether Texas can prohibit these transactions. It is whether prohibition is justified.

The Legislature should obtain a serious analysis of federal law, CFTC jurisdiction, state gambling authority, and current litigation before enacting penalties. If federal law preempts state restrictions against registered exchanges, Texas should acknowledge that limitation. If state authority remains, lawmakers should exercise it consistently with individual liberty, due process, and freedom of expression.

Texas should also distinguish federally regulated domestic markets from unregulated offshore platforms. A registered exchange may be subject to custody, reporting, surveillance, capital, and anti-manipulation requirements. An offshore operator may offer similar products without comparable safeguards or meaningful legal recourse for Texans.

Different risks may justify different disclosure, registration, or enforcement treatment. They do not justify presuming that every transaction offered through either type of platform should be illegal.

Criminal laws must provide fair notice. Texas Penal Code Chapter 47 defines a bet as an agreement to win or lose something of value solely or partially by chance while excluding certain financial and commercial transactions. Applying that language to federally regulated event contracts creates uncertainty that should not be resolved through prosecution after the fact.

Texans should not face criminal liability because a regulator later decides that a publicly available financial product looked too much like a wager. Any legislation should clearly define covered products, prohibited conduct, jurisdictional limits, and the intent required for liability.

The law should distinguish platform operators from individual participants. It should explain what connection to Texas is required when a digital transaction involves an exchange, intermediary, and users in multiple jurisdictions. Any new penalties should be prospective and proportionate to an identifiable harm.

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Definitions should not inadvertently encompass insurance, hedging, contests, research markets, journalism, play-money forecasting, commercial guarantees, or ordinary agreements involving future contingencies. Minnesota's experience with weather contracts demonstrates that this danger is not hypothetical.

For the 90th Legislature, we recommend rejecting a prohibition-first approach.

Texas should establish neutral rules requiring honest disclosures, protection of customer funds, clear settlement procedures, and enforcement of voluntary contracts. Fraud, theft, manipulation, deceptive marketing, and misuse of legally protected information should be punished consistently across industries. Lawmakers should protect minors without treating every adult as incapable of making his own choices. Restrictions concerning candidates, election officials, public employees, or others capable of controlling an outcome should be narrowly tied to genuine conflicts. Disclosure and private platform rules should be considered before criminal prohibition. Texas should clarify its existing statutes, distinguish regulated exchanges from unregulated operators, and carefully evaluate federal preemption. It should also recognize that political prediction markets create and publish information, raising free-speech concerns absent from ordinary gambling regulation. Most importantly, the Legislature should reconsider the premise that voluntary gambling by adults must be prohibited. If Texas retains restrictions, they should at least be neutral, clearly defined, and unrelated to protecting state lottery revenue or politically favored interests.

Adults should be free to assess risks, use their own money, and live with the results. Some will make responsible decisions. Others will not. Personal responsibility requires both freedom and accountability.

Government should ensure that rules are honest, neutral, and equally applied. It should not make every personal decision for the people of Texas.

Thank you for your consideration.

For Liberty, For Texas!

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