

**NINA MOINI:** Websites, like Kalshi and Polymarket, have unleashed a new era of betting on sports and current events. Minnesota lawmakers yesterday passed a bill banning these prediction markets from the state. It's the latest move states and tribal nations that want to rein in these platforms. And if what's happened in other states is any guide, it will attract some lawsuits.

A federal agency has sued five states for their attempts to regulate prediction markets. The platforms themselves have also filed lawsuits. Todd Phillips has been following this. He's an expert on financial regulation at Georgia State University, where he teaches law. He's joining us on the line. Thanks for being with us here on *Minnesota Now*. Todd.

**TODD** Thanks for having me. It's a pleasure.

**PHILLIPS:**

**NINA MOINI:** The bill that was just passed here in Minnesota is heading to the governor's desk. He'll have to sign it, obviously, for it to become law. But at that point, what do you expect will happen in the courts? Are you foreseeing almost instant lawsuits?

**TODD** I imagine there will be a lawsuit very quickly, perhaps multiple. As you noted in the intro, the federal regulator, the Commodity Futures Trading Commission, has filed lawsuits against five states for trying to enforce their gaming laws against prediction markets. Prediction markets have sued states, as well. It's just a legal mess all over the country.

**NINA MOINI:** OK. Do you think this will end up in the Supreme Court? Or what do you think?

**TODD** I do. I think, at some point, perhaps in the next year or two, the issue of state regulation of prediction markets will end up in the Supreme Court. I, truthfully have no idea how it will rule. At the lower courts level, we've seen some judges rule for the prediction markets, some judges rule for the states. And so it really is an open question about where the nine Supreme Court justices will come down on this issue.

**NINA MOINI:** OK. Let's back up a little, and talk about what's been happening across the country. What are some ways other states and tribal nations have tried to regulate prediction markets? What does it look like to regulate the market?

**TODD** That's a fantastic question. So I think it's important to take a step back, and ask what these things are. Prediction market is not actually a legal term. They are derivatives exchanges that are regulated by, again, the CFTC at the federal level.

And in the 1970s, Congress made a decision that said, we want the CFTC only regulating these things. We don't want states to regulate them. That hasn't really been a problem until last year, when the prediction markets came out and started looking a whole lot like gambling.

States have wanted to try to enforce their state gaming laws against the prediction markets-- again, because they look a lot like gambling. And so we've just seen wave after wave of lawsuits, of states suing the prediction markets, prediction markets suing the states, the CFTC suing the states. What it looks like for a state to regulate these things is really just that the prediction markets would have to comply with state gaming laws, that is only allowing users who are over the age of 21, having to allow users to ban themselves from the markets if they have a problem gaming. Or in 12 states in the country that ban gaming, states would say that the prediction markets aren't allowed to operate in those jurisdictions.

**NINA MOINI:** And you mentioned the CFTC a couple times, the Commodity Futures Trading Commission. Can you tell us a little bit about what that commission does? Why would they be the ones?

**TODD PHILLIPS:** It's a great question. So derivatives are a type of financial instrument, the price of which is based off the price of something else. Generally, derivatives are contracts on the price of corn. So if a farmer is growing corn and wants to sell the corn eight months in the future, they can enter into a derivative contract to set the price of the corn whenever they sell it, regardless of the fluctuations of the market. It's a really important hedging tool for farmers and producers and the overall economy.

In 2010, Congress passed the Dodd-Frank Law in response to the global financial crisis, which seems to have swept into it these event contracts, which are just yes/no contracts about whether something will or will not happen. Since 2010, the CFTC has kind of kept these contracts at bay, saying we're not going to allow them on our markets. And then last year, the markets just exploded. The CFTC took a hands-off approach. And now we're seeing all sorts of derivative contracts or event contracts based on sports, based on weather, based on anything under the sun.

**NINA MOINI:** And I think a lot of people are still stuck on prediction markets are not betting, gambling. So states don't have the authority to regulate it. Can you just explain, again, the difference.

**TODD PHILLIPS:** Oh, that's a very good question. So the difference is really minor. The way that normal sports gambling works is that bettors bet against a house, a single company that sets the odds. If the bettor wins, the house pays them. If the house wins, the bettor loses their money.

Prediction markets are different, in that you're not necessarily entering into contracts or betting against a house. You're betting against other people. Those people could be folks like you and me. They could also be giant financial companies that do high-frequency trading. And so, in that sense, the difference between betting against a sportsbook and betting against other people on a market is different, technically. But if you look at it, it really looks very the same.

And in fact, in those 12 states where the states have prohibited individuals from using sportsbooks or gambling, you can log on to DraftKings or FanDuel. And instead of telling you can't bet, they will just bring you over to a prediction market, where you can bet. It looks exactly the same to the users. It's really a problem.

**NINA MOINI:** I wonder if you think that these state bans or this type of legislation is effective and can actually stop people legally from participating.

**TODD PHILLIPS:** That's a great question. And that's really what the lawsuits are all about. The lawsuits are about whether states can enforce their laws against prediction markets or whether the federal law prevails and states cannot. And so, Minnesota is on the cusp of enacting an anti-prediction markets bill. Once the lawsuits are filed, the question really is going to be, can this law go into effect? Or is it preempted at the federal level and just is nothing, cannot be enforced, cannot be effective?

**NINA MOINI:** What do you think the role of Congress is here?

**TODD PHILLIPS:** Yeah, taking a step back to the late 1800s, Congress, at one point, had to make a decision about, what is gambling, and what is finance? And it made a decision. It drew the line.

There are a lot of folks who quibble about where the line was drawn. Congress needs to step in and draw the line again. Otherwise, it's going to be left to the courts.

I think there is some debate about whether these event contracts can be useful in finance. There are certainly some contracts that are. But I think the sports contracts demonstrate just how much like gambling this is.

And it would be prudent for Congress to step in and redraw the line again. There are a number of legislators who have introduced bills to take sports contracts, other types of contracts away from the CFTC's jurisdiction to give it back to the states to regulate its gaming. We'll have to see if any of those become law.

**NINA MOINI:** Todd, thank you so much for coming on and sharing your expertise with us and breaking things down.

**TODD PHILLIPS:** Yeah, thank you so much for having me. It's been a pleasure.

**NINA MOINI:** Todd Phillips is an assistant professor of law at Georgia State University.