

December 1, 2021

SUBMITTED VIA CFTC PORTAL

Secretary of the Commission
Office of the Secretariat
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the “Will the Supreme Court side with the plaintiffs in Carson v. Makin on constitutional grounds?” Contract

Dear Sir or Madam,

Pursuant to Section 5c(c) of the Commodity Exchange Act and Section 40.2(a) of the regulations of the Commodity Futures Trading Commission, KalshiEX LLC (Kalshi) hereby notifies the Commission that it is self-certifying the “Will the Supreme Court side with the plaintiffs in Carson v. Makin on constitutional grounds?” contract (Contract). This contract is intended to be listed only once.

Along with this letter, Kalshi submitted the following documents:

- A concise explanation and analysis of the Contract;
- Certification;
- Appendix A with the Contract’s Terms and Conditions;
- Confidential Appendices with further information; and
- A request for FOIA confidential treatment.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elie Mishory
Chief Regulatory Officer
KalshiEX LLC
emishory@kalshi.com

KalshiEX LLC

New Contract Submission: Will the Supreme Court side with the plaintiffs in *Carson v. Makin* on constitutional grounds?

Ticker: CARVMAK

Kalshi Contract Category: Political Decision

Carson v Makin SCOTUS Case

December 1, 2021

CONCISE EXPLANATION AND ANALYSIS OF THE PRODUCT AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION'S REGULATIONS THEREUNDER

Pursuant to Commission Rule 40.2(a)(3)(v), the following is a concise explanation and analysis of the product and its compliance with the Act, including the relevant Core Principles, and the Commission's regulations thereunder.

I. Introduction

The “Will the Supreme Court side with the plaintiffs in *Carson v. Makin* on constitutional grounds?” Contract is a contract relating to the result of the *Carson v. Makin* court case. After careful analysis, Kalshi (hereafter referred to as “Exchange”) has determined that the Contract complies with its vetting framework, which has been reviewed by the CFTC and formed part of the Exchange’s application for designation as a Contract Market (“DCM”) that was approved by the Commission.

In *Carson v. Makin*, the plaintiffs asked the Court to consider the question: “Does a state violate the Religion Clauses or Equal Protection Clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction?” In *Espinoza v Montana Department of Revenue* (2020), the Court ruled that a state may not restrict a student-aid program from being used at a school due to that school being religiously affiliated, however they left open the question of whether the aid could be restricted from being used at a school on the basis that the school offers religious instruction. In *Carson v. Makin*, the First Circuit ruled that the state of Maine (as represented in the court case by Commissioner of the Maine Department of Education A. Pender Makin) had not violated the First Amendment by restricting the use of student-aid from use in schools that offered religious instruction, which Maine classifies as “sectarian” schools. Such a decision differs from the decisions of the Sixth and Tenth Circuits. The decision was appealed by David and Amy Carson (the plaintiffs).

Further information about the Contract, including an analysis of its risk mitigation and price basing utility, as well as additional considerations related to the Contract, is included in Confidential Appendices B, C, and D.

Pursuant to Section 5c(c) of the Act and CFTC Regulations 40.2(a), the Exchange hereby certifies that the listing of the Contract complies with the Act and Commission regulations under the Act.

General Contract Terms and Conditions: The Contract operates similar to other binary contracts that the Exchange lists for trading. The minimum price fluctuation is \$0.01 (one cent). Price bands will apply so that Contracts may only be listed at values of at least \$0.01 and at most \$0.99. Further, the Contract is sized with a one-dollar notional value and has a minimum price fluctuation of \$0.01 to enable Members to match the size of the contracts purchased to their economic risks. The Exchange has further imposed position limits (defined as maximum loss exposure) of \$25,000 USD on the Contract. As outlined in Rule 5.12 of the Rulebook, trading shall be available at all times outside of any maintenance windows, which will be announced in advance by the Exchange. Members will be charged fees in accordance with Rule 3.6 of the Rulebook. Fees are charged in such amounts as may be revised from time to time to be reflected on the Exchange's Website. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract's Source Agency or the Underlying related to the Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading. That new Source Agency and Underlying would be objective and verifiable. Kalshi would announce any such decision on its website. All instructions on how to access the Underlying are non-binding and are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time. Furthermore, the Contract's payout structure is characterized by the payment of an absolute amount to the holder of one side of the option and no payment to the counterparty. During the time that trading on the Contract is open, Members are able to adjust their positions and trade freely. After trading on the Contract has closed, the Expiration Value and Market Outcome are determined. The market is then settled by the Exchange, and the long position holders and short position holders are paid according to the Market Outcome. In this case, "long position holders" refers to Members who purchased the "Yes" side of the Contract and "short position holders" refers to Members who purchased the "No" side of the Contract. If the Market Outcome is "Yes," meaning that the Court finds in favor of the plaintiffs in the court case *Carson v. Makin* on constitutional grounds, then the long position holders are paid an absolute amount proportional to the size of their position and the short position holders receive no

payment. If the Market Outcome is “No,” then the short position holders are paid an absolute amount proportional to the size of their position and the long position holders receive no payment. Specification of the circumstances that would trigger a Market Outcome of “Yes” are included below in the section titled “Payout Criterion” in Appendix A.

In determining the Market’s Outcome, the Exchange will review the Court’s opinion to determine the Expiration Value of the Contract. As noted in the terms and conditions contained in Appendix A, the Payout Criterion encompasses Expiration Values that include a Judgment of the Court or Opinion of the Court that rules in favor of the plaintiffs on constitutional grounds in *Carson v. Makin*. A ruling in favor of the plaintiffs on constitutional grounds includes a holding that Maine’s prohibition on the use of state-aid to “sectarian” schools is unconstitutional. A ruling is still considered “in favor of the plaintiffs on constitutional grounds” if the broader prohibition is struck down on constitutional grounds *even if the particular schools that the plaintiffs wish to send their children to (Bangor Christian and Temple Academy) still cannot receive public funding.*

Vacating the First Circuit ruling and remanding the case back to the lower courts without overturning the Maine prohibition on constitutional grounds is not encompassed in the Payout Criterion. A more narrow ruling that overturns the Maine prohibition on use of tuition assistance for “sectarian” schools on statutory grounds is not encompassed in the Payout Criterion.

**CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY
EXCHANGE ACT, 7 U.S.C. § 7A-2 AND COMMODITY FUTURES TRADING
COMMISSION RULE 40.2, 17 C.F.R. § 40.2**

Based on the above analysis, the Exchange certifies that:

- The Contract complies with the Act and Commission regulations thereunder.
- This submission (other than those appendices for which confidential treatment has been requested) has been concurrently posted on the Exchange's website at <https://kalshi.com/regulatory/filings>.

Should you have any questions concerning the above, please contact the exchange at ProductFilings@kalshi.com.



By: Eliezer Mishory
Title: Chief Regulatory Officer
Date: December 1, 2021

Attachments:

Appendix A - Contract Terms and Conditions

Appendix B (Confidential) - Further Considerations

Appendix C (Confidential) - Source Agency

Appendix D (Confidential) - Compliance with Core Principles

APPENDIX A – CONTRACT TERMS AND CONDITIONS

TERMS OF CONTRACTS TRADED ON KALSHI

Official Product Name: Will the Supreme Court side with the plaintiffs in *Carson v. Makin?*

Ticker and Rulebook: CARVMAK

CARVMAK

Scope: These rules shall apply to this contract.

Underlying: The Underlying for this Contract is Judgments of the Court and Opinions of the Court from the Supreme Court of the United States. Such opinions may include slip opinions, bench opinions and *per curiam* opinions, and includes opinions and judgments that are posted to the Supreme Court’s website. Dissents and concurrences are not included in the Underlying. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

Instructions: Slip opinions can be found at <https://www.supremecourt.gov/opinions/slipopinion/21>. In 2022, the URL will most likely be: <https://www.supremecourt.gov/opinions/slipopinion/22>. Click on Carson v. Makin. These instructions on how to access the Underlying are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time.

Source Agency: The Source Agency is the Supreme Court of the United States.

Type: The type of Contract is a Binary Contract.

Payout Criterion: The Payout Criterion encompasses Expiration Values that include a Judgment of the Court or Opinion of the Court that rules in favor of the plaintiffs on constitutional grounds in *Carson v. Makin*. A ruling in favor of the plaintiffs on constitutional grounds includes a holding that Maine’s prohibition on the use of state-aid to “sectarian” schools is unconstitutional. A ruling is still considered “in favor of the plaintiffs on constitutional grounds” if the broader prohibition is struck down on constitutional grounds *even if the particular schools that the plaintiffs wish to send their children to (Bangor Christian and Temple Academy) still cannot receive public funding*.

Vacating the First Circuit ruling and remanding the case back to the lower courts without overturning the Maine prohibition on constitutional grounds is not encompassed in the Payout Criterion. A more narrow ruling that overturns the Maine prohibition on use of tuition assistance for “sectarian” schools on statutory grounds is not encompassed in the Payout Criterion.

Minimum Tick: The Minimum Tick size for the referred Contract shall be \$0.01.

Position Limit: The Position Limit for the \$1 referred Contract shall be \$25,000 per Member.

Last Trading Date: The Last Trading Date of the initial iteration of the Contract will be the same day as the Expiration Date. The Last Trading Time will be the same as the Expiration time.

Settlement Date: The Settlement Date of the initial iteration of the Contract shall be no later than the day after the Expiration Date, unless the Market Outcome is under review pursuant to Rule 7.1.

Expiration Date: The Expiration Date of the Contract shall be the sooner of one day following the release of an Opinion of the Court or Judgment of the Court by the Supreme Court in *Carson v. Makin* as described above in the Underlying or October 31, 2023.

Expiration time: The Expiration time of the Contract iteration shall be 10:00 AM ET.

Settlement Value: The Settlement Value for this Contract is \$1.00.

Expiration Value: The Expiration Value is the value of the Underlying as documented by the Source Agency on the Expiration Date at the Expiration time.

Contingencies: Before Settlement, Kalshi may, at its sole discretion, initiate the Market Outcome Review Process pursuant to Rule 6.3(c) of the Rulebook. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract's Source Agency or the Underlying related to the Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading.