

DISRUPTIVE TECHNOLOGY AND THE LIMITS OF FEDERAL POWER

Prediction Markets, Article I, Section 8, and the Gilded Age Origins of American Regulatory Federalism

Term Project Handout

Senior Capstone / AP Government / Political Science — Constitutional Law & Public Policy Unit

ESSENTIAL QUESTION

When a new technology outruns the legal categories built to govern it, who decides how it will be regulated — the states, acting under their traditional police power, or Congress, acting under its enumerated power “to regulate Commerce ... among the several States”? This project asks you to test that question against two case studies separated by more than a century: the Gilded Age railroad corporation and the twenty-first-century online prediction market.

I. Setting the Stage: Two Disruptions, One Constitutional Question

In the 1870s and 1880s, the railroad corporation was the most disruptive economic technology Americans had encountered: it moved goods and information faster than any prior institution, it operated across state lines as a matter of course, and it was, almost immediately, too large and too interstate for any single state legislature to discipline on its own. The legal system built around small, local, intrastate commerce had no ready category for a Chicago-chartered company whose rails ran through a dozen states. Lawmakers, regulators, and judges spent three decades arguing not chiefly about whether railroads should be regulated, but about which sovereign — state or federal — possessed the constitutional authority to do it.

Today, the online prediction market poses a structurally similar puzzle. Platforms such as Kalshi and Polymarket let users buy and sell contracts whose value depends on the outcome of a future event — an election, a Federal Reserve decision, or, increasingly, the outcome of a football game. The platforms insist they are exchanges trading federally regulated derivatives (“event contracts”), squarely within the jurisdiction of the Commodity Futures Trading Commission (CFTC) under the Commerce Clause power Congress delegated to it. State gaming regulators insist the same products are simply sports betting wearing a costume, and that states retain their traditional police-power authority to regulate gambling within their borders. Your project asks you to use the Gilded Age fight over the railroad to illuminate the present fight over the prediction market — and to reach your own reasoned judgment about how Article I, Section 8 should resolve it.

II. The Constitutional Text You Are Interpreting

A. The Commerce Clause — Article I, Section 8, Clause 3

TEXT

“The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ...”

Two interpretive questions will run through your entire project. First, does “regulate” include the power to prohibit a category of commerce outright, or only the power to standardize and facilitate it? Second, what counts as “commerce” in the first place — does it include intangible financial instruments and contracts of chance, or only the physical movement of tangible goods?

B. The Necessary and Proper Clause — Article I, Section 8, Clause 18

TEXT

“The Congress shall have Power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers ...”

This clause is the constitutional basis for Congress delegating regulatory authority to an administrative agency — the Interstate Commerce Commission in 1887, the Commodity Futures Trading Commission today — rather than writing every rule itself on the floor of the House and Senate.

C. The Supremacy Clause and Federal Preemption — Article VI, Clause 2

Whenever a federal statute and a state statute appear to conflict, the Supremacy Clause requires courts to ask whether Congress intended its law to displace state law in that field (“field preemption”) or whether compliance with both laws is simply impossible (“conflict preemption”). As you will see in Section IV, this is the precise doctrinal battlefield on which the prediction-market litigation is currently being fought.

III. The Gilded Age Precedent: Building a Federal Regulatory State Around a New Technology

Before Congress could regulate the railroad, courts first had to decide who could regulate it at all. The sequence of cases below traces that argument from the states' traditional police power, through the constitutional crisis created by an unregulated interstate technology, to Congress's eventual answer: a dedicated federal regulatory commission, followed shortly by the conclusion that some commerce — including commerce in gambling instruments — could be banned by Congress outright.

A. *Munn v. Illinois* (1877)

The Supreme Court upheld an Illinois law setting maximum rates for grain elevators, reasoning that a business “affected with a public interest” may be subjected to public regulation even though it remains privately owned. *Munn* established the doctrinal foundation for state economic regulation of

disruptive new infrastructure — but it addressed only intrastate activity, leaving the harder question of interstate railroads unresolved.

B. Wabash, St. Louis & Pacific Railway Co. v. Illinois (1886)

The Court struck down an Illinois law regulating railroad rates on shipments that crossed state lines, holding that only Congress — not individual states — may regulate commerce “among the several States.” Wabash exposed a regulatory vacuum: states could no longer discipline interstate railroad rates, and Congress had not yet acted. The decision is the single most direct historical analogue to your project, because it is the moment courts confirmed that a disruptive interstate technology had outrun the states' constitutional authority to govern it.

C. Congress's Legislative Answer: The Interstate Commerce Act of 1887

Within a year of Wabash, Congress passed the Interstate Commerce Act, creating the Interstate Commerce Commission (ICC) — the first independent federal regulatory agency in American history. The Act required railroad rates to be “reasonable and just,” banned certain discriminatory pricing practices, and gave the ICC authority to investigate complaints. The structural choice Congress made in 1887 — a specialized federal commission, rather than Congress itself, policing an interstate industry — is the direct institutional ancestor of the modern CFTC.

D. ICC v. Cincinnati, New Orleans & Texas Pacific Railway Co. (1897)

Known as the Maximum Freight Rate Case, the Supreme Court held that the 1887 Act did not actually give the ICC the power to set rates prospectively — only to review rates already charged for reasonableness after the fact. The ruling badly weakened the young agency and left railroads largely able to set their own rates for another decade, until Congress restored and expanded ratemaking authority in the Hepburn Act of 1906. The case is a cautionary precedent for your project: a federal agency's regulatory authority is only as broad as the statutory text creating it, and ambiguous delegation invites litigation that can gut an agency's practical power even when the underlying policy goal is left intact.

E. United States v. E.C. Knight Co. (1895)

In the “Sugar Trust Case,” the Court held that the Sherman Antitrust Act of 1890 could not reach a sugar-refining monopoly because manufacturing was a local activity that merely preceded commerce, rather than commerce itself. E.C. Knight shows the Gilded Age Court drawing a narrow, formalistic line around the word “commerce” — a line that the very next major Commerce Clause case, discussed below, would draw very differently when the disruptive technology in question was gambling rather than manufacturing.

F. Champion v. Ames, 188 U.S. 321 (1903) — The Lottery Case

This is the single most important precedent for your project. Congress had banned the interstate shipment of lottery tickets in the Federal Lottery Act of 1895. Charles Champion was indicted for shipping Paraguayan lottery tickets from Texas to California. He argued that the Commerce Clause gave Congress power only to regulate commerce, not to prohibit it entirely, and that lottery tickets — mere paper promises with no inherent value — were not “articles of commerce” in the first place.

By a 5–4 vote, Justice Harlan's majority opinion rejected both arguments. Lottery tickets, the Court held, are subjects of traffic and therefore subjects of commerce; the carriage of such tickets across state lines is squarely a regulation of interstate commerce. More sweepingly, the Court held that Congress's commerce power is plenary and may be used to exclude an article from interstate commerce altogether whenever Congress judges the article “injurious to the public morals,” and that the Tenth Amendment does not limit this power. Chief Justice Fuller's dissent warned that allowing Congress to prohibit (rather than merely regulate) interstate traffic in an article would erase the constitutional line between the commerce power and a general federal police power — precisely the centralization the Framers had tried to avoid.

Champion v. Ames is your project's foundational case because it is the moment the Supreme Court first confronted the question your research paper must ultimately answer in a new context: can Congress use Article I, Section 8 to reach — and even ban — a form of gambling simply because it moves across state lines, or does that stretch “regulate Commerce” well beyond what the Framers intended? Note also the case's afterlife: in *Hammer v. Dagenhart* (1918), a differently constituted Court refused to extend the same logic to ban interstate shipment of goods made with child labor, suggesting that the Gilded Age Court's willingness to expand the commerce power tracked the moral status of the article being shipped at least as much as it tracked any consistent doctrine. Ask yourself whether twenty-first-century courts are doing something similar with prediction markets.

Comparative Table: Two Disruptions Across Time

Dimension	Railroads (1870s–1900s)	Prediction Markets (2020s)
Disruptive technology	Interstate rail networks moving goods and capital faster than any prior infrastructure	App-based event-contract exchanges using AI-driven personalization and real-time data
Initial legal gap	State common-carrier and rate law could not reach interstate routes (<i>Wabash</i> , 1886)	State gambling law arguably cannot reach a product the CFTC classifies as a federally regulated derivative
State response	State rate commissions and grain-elevator regulation (<i>Munn</i> , 1877)	Cease-and-desist orders from state gaming regulators in Nevada, New Jersey, Maryland, Ohio, and others
Federal institutional response	Interstate Commerce Act of 1887; creation of the ICC	CFTC rulemaking and litigation asserting “exclusive jurisdiction” under the Commodity Exchange Act
Key doctrinal fight	Does “regulate Commerce” permit a dedicated federal agency to override state rate law?	Does the Commodity Exchange Act field-preempt state gambling law as applied to event contracts?
Gambling-specific precedent	<i>Champion v. Ames</i> (1903): Congress may prohibit interstate traffic in lottery tickets	Open question: does the same logic support federal preemption, or federal prohibition, of sports-style event contracts?

Dimension	Railroads (1870s–1900s)	Prediction Markets (2020s)
Resolution mechanism	Congress legislated (1887, 1906); courts narrowed and then accepted agency authority over decades	Unresolved — a circuit split is forming and the issue may reach the Supreme Court; Congress is simultaneously drafting new legislation

IV. The Contemporary Case: Prediction Markets Before the Courts

A prediction market allows a user to buy a contract that pays out if a specified future event occurs — “Will Team A win the championship?” or “Will Candidate B win the election?” — and trade that contract before the event resolves. Platforms such as Kalshi register these products as “event contracts” on a CFTC-regulated derivatives exchange under the Commodity Exchange Act (CEA), the same statutory framework that governs futures contracts on wheat, oil, or interest rates. State gaming regulators counter that a contract whose entire value depends on which team scores more points is, functionally, a sports bet — regardless of the legal wrapper around it — and falls within the states' historic police power over gambling.

A. The Litigation Pattern

Beginning in 2025, Kalshi filed a coordinated series of federal lawsuits against state gaming regulators — ultimately reaching more than a dozen states, including Nevada, New Jersey, Maryland, New York, Ohio, Connecticut, Tennessee, Utah, Arizona, Iowa, and Michigan — arguing that any state cease-and-desist order against its sports-related event contracts is preempted by the CEA's grant of exclusive federal jurisdiction to the CFTC. Federal district courts in Nevada and New Jersey both sided with Kalshi in 2025, issuing preliminary injunctions that blocked state enforcement. The CFTC itself has filed amicus briefs in several of these cases asserting that state efforts to restrict event contracts “undermine the agency's exclusive jurisdiction.”

B. The Circuit Courts Begin to Speak — and Disagree

In April 2026, a divided panel of the U.S. Court of Appeals for the Third Circuit ruled 2–1 that Kalshi's sports-related event contracts are likely “swaps” under the CEA and that federal law preempts New Jersey's gambling statute as applied to them — the first federal appellate ruling on the question. Judge Jane Richards Roth dissented. Meanwhile, the Ninth Circuit has heard consolidated oral argument in parallel cases brought by Kalshi, Robinhood, and Crypto.com against Nevada's gaming regulators, in a case where the district court below had reached the opposite conclusion, finding that sports event contracts are not swaps at all. A genuine circuit split is therefore forming — the precise condition under which the Supreme Court typically agrees to hear a case.

C. The Agency's Own Self-Understanding

CFTC Chairman Michael Selig has publicly distinguished prediction markets from conventional sportsbooks, arguing that most participants are not using the platforms for “entertainment” and that prediction markets and sports betting are, in his words, “two separate things” deserving separate regulatory treatment. Critics — including Senator Blumenthal — argue that this distinction collapses once the overwhelming majority of trading volume on these platforms is, in fact, tied to sporting events.

For your project: notice how closely this argument tracks *E.C. Knight's* manufacturing/commerce distinction and *Champion v. Ames's* traffic/article-of-commerce distinction. Courts and regulators are once again being asked to decide whether a formal legal label (“swap,” “derivative,” “investment”) controls, or whether a court should look through the label to the economic substance of the underlying activity (a wager on a game's outcome).

V. Congress Responds: Senator Blumenthal and Pending Federal Legislation

Just as the Interstate Commerce Act of 1887 was Congress's legislative answer to the regulatory vacuum exposed by Wabash, several members of Congress — most visibly Senator Richard Blumenthal of Connecticut — have introduced bills in 2026 attempting to resolve the prediction-market jurisdictional fight legislatively, rather than leaving it to the courts.

LEGISLATIVE PROFILE: The Prediction Markets Security and Integrity Act

Sponsors: Sen. Richard Blumenthal (D-CT) and Sen. Andy Kim (D-NJ)

Introduced: March 2026; referred to the Senate Committee on the Judiciary

Core provisions: would affirmatively grant states authority to oversee prediction markets through an attorney-general-approved state regulatory framework; would restrict insider trading on event contracts; would set a minimum participation age of 21; and would clarify that prediction markets are not categorically exempt from state oversight — directly reversing the field-preemption argument the CFTC and Kalshi have pressed in court. Senator Blumenthal's stated rationale, echoed in his public statements, is that allowing billion-dollar platforms to offer sports-outcome contracts under a financial-markets label — free of the consumer protections, self-exclusion tools, and problem-gambling funding that accompany state-regulated sports betting — effectively re-creates the unregulated gambling market that state legalization frameworks were designed to displace.

RELATED BILL: S. 4469 (Insider Trading / Officials' Use of Event Contracts)

Sponsors: Sen. Katie Britt (R-AL), Sen. Richard Blumenthal (D-CT), and Sen. Marsha Blackburn (R-TN)

Referred to the Senate Committee on Commerce, Science, and Transportation, May 2026
Would prohibit members of Congress and certain executive branch officials from trading event contracts, and would direct the CFTC to formally study insider-trading risks and broader market developments — a bipartisan acknowledgment that the integrity questions raised by prediction markets cut across party lines.

As you build your argument, consider the institutional choice these bills represent. Congress could wait for the Supreme Court to resolve the Kalshi circuit split definitively — the path the railroad question largely followed between Wabash (1886) and the Hepburn Act (1906) — or it could legislate first and pre-empt the litigation entirely, the way the original 1887 Act tried (with mixed initial success, given the 1897 Maximum Freight Rate Case) to settle the railroad question by statute. Which strategy better fits the constitutional design of Article I, Section 8, and which is more likely to succeed given the current composition of Congress and the courts?

VI. Media Connection: PBS's Breaking the Deadlock — Gambling With Your Life

PBS's interactive panel series Breaking the Deadlock devoted its episode “Gambling With Your Life” (2026) to exactly the policy terrain mapped in Sections IV and V. The episode places journalists,

industry executives, public-health researchers, and elected officials — including Senator Blumenthal himself — into a moderated, scenario-driven discussion built around a hypothetical family in the fictional state of “Middlevania.” The panel works through a single household’s experience with legalized state sports betting, AI-personalized marketing, and, in its final act, an unregulated prediction-market platform, in order to dramatize the jurisdictional seam this project asks you to analyze: state-licensed sportsbooks operate under consumer-protection rules — betting limits, self-exclusion lists, advertising restrictions — that prediction markets, regulated instead by the CFTC as financial instruments, currently do not.

On camera, Senator Blumenthal articulates the same position reflected in his actual legislation: that a federal commission designed to oversee commodity derivatives is ill-suited to police a product whose practical effect, for a teenager wagering on a basketball game from his bedroom, is indistinguishable from sports gambling. Industry representatives in the episode counter that state-by-state regulation is precisely what drives consumers toward less accountable offshore or unregulated platforms — an argument with a clear Gilded Age echo: railroads, too, once argued that a patchwork of inconsistent state rate regulations was itself the problem federal uniformity was meant to solve.

Discussion and Analysis Prompts

1. Identify at least two moments in the episode where a panelist’s argument tracks a specific doctrine from Section III or IV above (e.g., field preemption, the entertainment/financial-product distinction, the “patchwork of state laws” argument). Cite the doctrine by name.
2. The episode is a dramatized, scenario-based discussion format, not a courtroom or a legislative hearing. What are the limits of treating it as evidence in an academic paper? How should you cite it differently than you would cite a judicial opinion or a CRS report?
3. Senator Blumenthal’s on-screen position aligns with the actual Prediction Markets Security and Integrity Act described in Section V. What does it tell you about the relationship between public deliberation and legislative drafting that a sitting senator would use a televised panel discussion to preview pending legislation?

VII. Term Project Directions

A. The Assignment

Write a thesis-driven research paper that takes a position on the following question: Should prediction-market event contracts tied to sporting events be classified, for constitutional and regulatory purposes, as financial futures within the CFTC's exclusive federal jurisdiction, or as a form of gambling properly subject to state police-power regulation? Your thesis must take a clear side; a paper that simply describes “both sides” without committing to and defending a position will not meet the assignment's requirements.

B. Required Elements

4. Constitutional textual analysis: a close reading of Article I, Section 8, Clauses 3 and 18, and Article VI, Clause 2, applied directly to your thesis.
5. Gilded Age precedent analysis: substantive engagement with at least two of *Munn*, *Wabash*, the Interstate Commerce Act of 1887, *ICC v. Cincinnati, New Orleans & Texas Pacific Railway Co.*, and *E.C. Knight*, plus mandatory engagement with *Champion v. Ames* as your central historical precedent.
6. Contemporary case law analysis: substantive engagement with at least one federal court ruling in the *Kalshi* litigation (Third Circuit, Ninth Circuit, or a relevant district court opinion).
7. Legislative analysis: an account of Senator Blumenthal's Prediction Markets Security and Integrity Act (or a comparable bill) and an assessment of whether it would resolve, sidestep, or worsen the constitutional question you are analyzing.
8. Media analysis: at least one properly cited reference to the PBS *Breaking the Deadlock* episode, used as evidence of contemporary political and industry framing — not as legal authority.
9. A clearly stated counter-argument section in which you present the strongest version of the position you are not taking, and explain why your thesis survives it.

C. Format Requirements

- Length: 1,800–2,500 words, not including the bibliography.
- Citation style: Chicago (notes-bibliography) or Bluebook legal citation — confirm your instructor's preference before drafting.
- Minimum of eight sources, including at least three primary sources (constitutional text, statutory text, or a judicial opinion).
- Because this is an area of active litigation and pending legislation, include a brief “status as of [your submission date]” note acknowledging that the legal landscape may have changed since your research was completed.

D. Suggested Research Questions

- Does *Champion v. Ames*'s “plenary power” reasoning logically support the CFTC's exclusive-jurisdiction claim today, or does it actually support state authority to ban sports-style event contracts the way Congress once banned lottery tickets?

- What lessons does the 1897 Maximum Freight Rate Case offer about the risk that an agency's statutory mandate (here, the CFTC's authority under the CEA) is narrower than its public rhetoric of “exclusive jurisdiction” suggests?
- Is the Prediction Markets Security and Integrity Act a constitutionally sound use of the commerce power, or does it raise the same federalism objections Chief Justice Fuller raised in his *Champion v. Ames* dissent — just inverted, with Congress now handing power back to the states rather than taking it away?
- How should courts treat the distinction CFTC Chairman Selig draws between “entertainment” products and “financial” products, given that *E.C. Knight* and *Champion v. Ames* reached opposite conclusions about how much a formal legal label should control the constitutional analysis?
- If the Supreme Court ultimately resolves the *Kalshi* circuit split, should it look to *Wabash* and the 1887 Act as a template for legislative deference, or to *Champion v. Ames* as a template for an expansive, plenary reading of the commerce power?

E. Grading Criteria

Category	Points	What I Am Looking For
Constitutional & Doctrinal Analysis	25	Precise, text-grounded use of Article I, Section 8 and preemption doctrine; not just summary, but applied argument
Gilded Age Historical Precedent	25	Accurate, substantive treatment of <i>Munn</i> , <i>Wabash</i> , the ICA, <i>ICC v. Cincinnati NO&TP</i> , <i>E.C. Knight</i> , and <i>Champion v. Ames</i> as appropriate to your thesis
Contemporary Application	20	Accurate engagement with current <i>Kalshi</i> litigation, CFTC rulemaking posture, and Blumenthal legislation
Media & Source Integration	10	Appropriate, properly cited use of the PBS special as political-discourse evidence, distinguished from legal authority
Argument, Counter-Argument & Writing	20	Clear thesis, fair treatment of the strongest opposing view, graduate-register prose and organization

VIII. Sources to Begin Your Research

Primary Sources

- U.S. Constitution, Article I, Section 8 and Article VI.
- Interstate Commerce Act of 1887, 24 Stat. 379.
- Commodity Exchange Act, 7 U.S.C. § 1 et seq.
- *Champion v. Ames*, 188 U.S. 321 (1903).
- *Wabash, St. Louis & Pacific Railway Co. v. Illinois*, 118 U.S. 557 (1886).
- *Munn v. Illinois*, 94 U.S. 113 (1877).
- *United States v. E.C. Knight Co.*, 156 U.S. 1 (1895).
- *ICC v. Cincinnati, New Orleans & Texas Pacific Railway Co.*, 167 U.S. 479 (1897).
- *KalshiEX, LLC v. Hendrick* (D. Nev. 2025) and *KalshiEX, LLC v. Flaherty* (D.N.J. 2025), plus the Third Circuit's 2026 appellate decision in the New Jersey matter.
- Sen. Richard Blumenthal, press materials and bill text for the Prediction Markets Security and Integrity Act (119th Congress).

Secondary Sources and Starting Points

- Congressional Research Service, “Prediction Markets: Policy Issues for Congress,” Congress.gov (search the CRS “In Focus” series for the most current version).
- Law-firm client memoranda analyzing the Third and Ninth Circuit litigation (search recent publications from major firms following CFTC/Kalshi appellate developments).
- PBS, [“Breaking the Deadlock: Gambling With Your Life.”](#) 2026 (cite the episode and original air date in your bibliography; treat as a primary artifact of political discourse, not legal authority).

Note: This is a fast-moving area of law and policy. Confirm the current procedural status of the Kalshi appellate litigation and the pending Senate bills before your final draft is due.