**Public Citizen’s Written Testimony for the Record**

**Before the Committee on House Administration**

**Hearing on “Examining Stock Trading Reforms for Congress”**

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March 24, 2022

**Summary**

Public Citizen has endorsed and supports all the legislative proposals to ban stock trading activity by members of Congress and senior government officials. Each legislative proposal would be a vast improvement over the existing conflict of interest laws when it comes to buying and selling individual investments on the stock market.

While Public Citizen would support any one of the key legislative reforms on stock trading, Public Citizen encourages Congress to draw from the “best” elements of each legislative proposal in building a comprehensive consensus bill to move beyond the STOCK Act that closely resembles the model law described below. Such a model law would:

* Ban trading individual stocks while serving in public office by members of Congress, their spouses and dependent children; senior congressional staff; very senior executive branch officials, including the president and vice president; and Supreme Court justices.
* Require that conflicted stock investments be resolved either through (i) tax-deferred divestiture of the investments, (ii) tax-exempt rollover of individual investments into a widely-held and diversified investment fund, and/or (iii) either removing any control to buy or sell existing individual investments while in public office or transferring the investments into a qualified blind trust.
* Establish a “searchable, sortable and downloadable” on-line disclosure system for permissible stock transactions for Congress, the executive branch and the courts.
* Enhance the monitoring and enforcement mechanisms for violations of the insider trading laws, restrictions on trading covered investments, and reporting violations.

**Background**

Congress suffered significant harm in the wake of questionable stock trading activity by a few members before and during the worst pandemic crisis in modern history. The pandemic has had devastating economic consequences, dearly costing many American citizens their financial security and retirement benefits invested in the stock market. But a handful of members of Congress, privy to confidential briefings from health and intelligence officials on the likely economic consequences of the pandemic, saved themselves from the same fate by dumping their stock investments weeks before the stock market crashed due to the pandemic.

Whether or not these members acted on nonpublic material information gleaned from the congressional briefings, which if so would constitute illegal congressional insider trading, the public appearance of these members benefiting from our loss has cast a pall over the integrity of the Congress.

In 2012, Congress adopted the STOCK Act (Stop Trading on Congressional Knowledge Act of 2012) in response to congressional insider trading allegations. The STOCK Act clarified that the laws against insider trading apply to members of Congress in their official capacities and established an on-line disclosure system of stock trading activities by members to ensure compliance. It is a noble law and was a noble act by Congress.

The original law contains two key pillars. (A third pillar requiring Wall Street operatives and lobbyists who gather congressional information for trading purposes, called “political intelligence consultants,” to register and disclose their activities and clients under the disclosure system of the Lobbying Disclosure Act was removed from the final legislation before passage.) The two remaining pillars of the law include:

* Clarifying that the laws against insider trading apply to members of Congress and congressional staff.
* Mandating real-time disclosure of stock trades by members of Congress and senior staff, posted on the Internet in a “searchable, sortable and downloadable” format.

The final law was amended to include some 28,000 executive branch employees, which was problematic because it also captured ambassadors and security officials under the on-line disclosure system. A reasonable solution would have been to rein in the scope of on-line disclosures for executive branch personnel by excluding those with genuine safety issues. Instead, Congress over-reacted and approved legislation in 2013 with no reading of the bill and no debate that slashed the number of executive branch employees subject to on-line disclosure to about 70, consisting of cabinet officials who are severely restricted from trading on the stock market anyway. The new bill also eliminated the requirement that congressional staff trades be reported online, and ended the plans to create a “searchable, sortable and downloadable” database to present the trades of those officials who remained covered by the law.[[1]](#footnote-1)

As it stands today, the STOCK Act still bans congressional insider trading, but only members of Congress and a relatively small group of executive branch officials are required to provide timely on-line disclosure of their stock trading activities and these on-line disclosures are no longer sortable and downloadable. To uncover recent stock trading activity in Congress, for example, the data now consists merely of .pdf snapshots of the filings and must be accessed on a case-by-case basis – a transparency system antiquated by design.[[2]](#footnote-2)

The Secretary of the Senate and Clerk of the House collect the periodic transaction reports of stock trades by senior congressional staff and members of Congress mandated within 45 days of any stock trades and post them on-line for members of Congress. Staff reports are also available to the public but not on-line. Meanwhile, the Office of Government Ethics (OGE) has not collected any such periodic transactions reports for captured executive branch personnel and has not even created a web portal for disclosure of these reports, despite the law.

Without a doubt, the STOCK Act has had a dramatic impact and significantly reined in opportunities for congressional insider trading. A study by Public Citizen on stock trading activity by senators three years prior, and three years after, passage of the STOCK Act found that the law reduced stock transactions by 68 percent.[[3]](#footnote-3) The real-time disclosure system compelled senators to vastly reduce playing in the stock market in order to avoid even the appearance of congressional insider trading. However, the study also found that some senators continued trading stocks unabated by the disclosure requirement, often buying and selling stocks in businesses that they directly oversee in their official capacities in Congress. This means that the STOCK Act did indeed substantially reduce the opportunities for congressional insider trading, but a window of opportunity for some members remains open.

**Recent Scandals and Revisiting the STOCK Act**

Stock trading activity by some members of Congress in the course of the pandemic brought home the point that the window for congressional insider trading remains open, even with the deterring effect of the STOCK Act’s disclosure requirement.

Following revelations that Sens. Richard Burr (R-N.C.), David Perdue (R-Ga.) and Kelly Loeffler (R-Ga.) and her husband, Jeffrey Sprecher, CEO of the Intercontinental Exchange, unloaded millions of dollars of their personal stock shortly after receiving confidential governmental briefings on the pending pandemic crisis, but before stock values crashed in the wake of the pandemic, the Securities and Exchange Commission (SEC) issued a stern warning against trading on non-public material information related to the coronavirus.[[4]](#footnote-4)While the coronavirus pandemic initially had taken a huge toll on the retirement benefits of most Americans, a few “lucky” members of Congress, privy to confidential briefings by health and intelligence authorities, saw the stock market crash coming and dumped their stock holdings, saving themselves from millions of dollars in losses.

Insider trading is very difficult to prove even in the best of circumstances, and so the Senate ethics committee and the Securities and Exchange Commission dropped their investigations against all the senators except Burr. But the allegations of congressional insider trading have taken a serious toll and theycut widely across both parties. The most serious charges in the course of the pandemic focused on Republican Sens. Burr, Loeffler and Perdue, who each paid dearly by either forfeiting their leadership or senate seats, but the scandals also stretched across party lines, including suspicious stock trading activity by Sen. Diane Feinstein (D-Cal.), Rep. Tom Malinowski (D-NJ) and House Majority Leader Nancy Pelosi (D-Cal.).

Just as importantly, the in-depth investigation by *Business Insider* found massive reporting violations in just the last two years by members of both parties, including 57 members of Congress and 182 senior congressional staff.[[5]](#footnote-5) Reporting requirements are widely evaded by members and staff because compliance to the law is not being closely monitored by the congressional ethics committees and the $200 penalty for a violation is so minimal as to have little compelling impact.

The scandals have brought a wave of public condemnation, with overwhelming majorities of Americans polled across all parties in favor of prohibiting members of Congress from trading on the stock market.[[6]](#footnote-6) This has spurred a bipartisan plethora of legislative proposals to ban stock trading activity altogether by members of Congress.[[7]](#footnote-7) At least 10 legislative measures have been introduced in the 117th Congress since the pandemic to go further than the original STOCK Act in regulating stock trading by government officials. Some of the key legislative proposals include: Ban Conflicted Trading Act by Sen. Merkley and Rep. Krishnamoorthi (S. 564, HR 1579); TRUST in Congress Act by Rep. Spanberger (HR 336); Ban Congressional Trading Act by Sen. Ossoff (S. 3494); STOCK Act 2.0 by Sen. Gillibrand and Rep. Porter (S. 3612. HR 6694); Banning Insider Trading in Congress Act by Sen. Hawley (S. 3504); and Bipartisan Ban on Congressional Stock Ownership Act by Sen. Warren and Rep. Jayapal (S. 3631, HR 6678).

All of these measures would prohibit stock trading activity by sitting members of Congress. Some would include extending the restrictions to the executive and judicial branches of government. Some would capture senior congressional staff and/or spouses of members and dependent children. And some would allow members to hang onto their stock investments though not touch them while serving in Congress, and others would require members to transfer all stock investments into qualified blind trusts. The Warren/Jayapal measure would mandate that members divest entirely from stock holdings other than those in a “widely-held and diversified investment fund.”

**It's Time To Go a Step Further than the STOCK Act**

The STOCK Act is a constructive and necessary law making it clear for the first time that the law against insider trading also applies to Congress and officials in the executive and judicial branches gleaning inside material information in the course of their official duties. Testimony by SEC Enforcement Director Robert Khuzami during congressional debate on the STOCK Act confirmed that, given the ambiguity of the insider trading law, the agency had never pursued enforcement actions against a member of Congress acting upon insider information gleaned from their official duties.[[8]](#footnote-8) The STOCK Act was, and remains, necessary.

But the recent scandals make it clear that it is time to go a step further and ban stock trading activity altogether for some, if not most, government officials.

All the new legislative proposals cited above would provide a vast improvement over the current system. Public Citizen has endorsed each and every one of the measures. Congress must now forge and pass a consensus bill, tapping into the best elements of each of the reform measures.

A model consensus bill would include the following “best” elements:

1. **Covered Officials**. A ban on stock trading activity while serving in public office ideally should extend to members of Congress, their spouses and dependent children; senior congressional staff; very senior executive branch officials, including the president and vice president; and Supreme Court justices.

All other senior officials as defined above a specified salary grade in all three branches of government, including all lower court judges, should be subject to the insider trading restrictions and disclosure requirements of the STOCK Act.

1. **Covered Investments**. The buying and selling of individual stocks, securities, derivatives and cryptocurrencies should be banned for covered officials while in public office. A widely-held and diversified investment fund may include exchange-traded funds (ETF) as long as such investments “do not have a stated policy of overly concentrated investments” and that “do not pose a conflict of interest.”
2. **Trading Restrictions.** A covered person should not buy and sell any covered investments while in public office, except to (i) divest of the investments, (ii) rollover the investments into a widely-held and diversified investment fund, and/or (iii) remove any control to buy or sell existing covered investments while in public office or transfer the investments into a qualified blind trust.

The preferred resolution of covered investments would be either to divest of the conflicting investments or transfer them into a widely-held and diversified investment fund whose value rises and falls with the economy generally, rather than with the fortunes of a particular business. As currently under the ethics procedures in the executive branch, any official required to divest of conflicted investments should be eligible for a certificate of divestiture in order to defer paying taxes on the selling of the investments. Similarly, any official who chooses to rollover their individual stock investments into mutual funds should be able to do so without paying taxes on the transaction, if the transaction is done within a very brief time window.

Divestiture as well as rolling over covered investments into mutual funds resolve both the opportunities for insider trading as well as the opportunities for taking official actions that affect the value of specific investments.

The options of removing control to sell or buy existing covered investments while holding onto the investments, or transferring the funds into a qualified blind trust, resolve the most critical problem of potential insider trading but leave open the opportunities for taking official actions to affect value of those known covered investments. Qualified blind trusts are not in fact blind, since the official knows which original investments were moved into the trust and must be notified when, and if, those specific investments are ever liquidated.[[9]](#footnote-9) The trust manager must also annually inform the official of overall investment income or losses. So, in either case, the official generally knows where the investments lie, which conceivably could influence official actions. Nevertheless, these options squarely address the insider trading problem.

1. **Public Disclosure**. Senior congressional staff should once again be required to disclose their stock transactions on-line for public inspection. Otherwise, it is a near-Herculean task to comb through some 8,000 paper filings of stock transactions by senior staff. Furthermore, and more importantly, the STOCK Act’s on-line disclosure requirement should be returned to the “searchable, sortable and downloadable” standard of the original 2012 law. Under the current system, a researcher must conduct 535 individual searches of each and every member of Congress in order to answer the simple question of which member made a stock transaction in the last month. A researcher should be able simply to go to the on-line database and make a single query of “who traded stocks in the last month?”

Meanwhile, a similar searchable, sortable and downloadable on-line database should be developed both for the executive branch and the courts. The Office of Government Ethics and the Administrative Office of the U.S. Courts should establish and maintain disclosure web portals for administration of the STOCK Act for their respective jurisdictions.

1. **Enforcement**. Penalties should be scaled to the offense. Insider trading itself should be subject to the penalties prescribed by the Securities and Exchange Commission, which often involve criminal penalties. Violations of buying or selling covered investments while in office should be subject to a range of civil penalties enforced by the appropriate enforcement agency of jurisdiction that may include substantial fines and forfeiture of ill-gotten gains. Reporting violations, especially for members of Congress, judges and senior executive branch officials, should be subject to significant fines well above $200, scaled according to the egregiousness of the violation and the resources of the offender.

**Conclusion**

Public Citizen has endorsed and supports all the key legislative proposals to ban stock trading activity by members of Congress and senior government officials. Each legislative proposal would be a vast improvement over the existing conflict of interest laws when it comes to buying and selling individual investments on the stock market.

Public Citizen encourages Congress to draw from the “best” elements of each legislative proposal in building a comprehensive consensus bill to move beyond the STOCK Act that closely resembles the model law described in this testimony.

1. Tamara Keith, “How Congress quietly over-hauled its insider trading law,” *NPR* (April 16, 2013), available at: [http://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-](http://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-trading-law) [trading-law](http://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-trading-law) [↑](#footnote-ref-1)
2. Craig Holman, “Congressional insider trading revisited (but don’t tell anyone),” *Roll Call* (May 9, 2013), available at: [http://www.rollcall.com/news/congressional\_insider\_trading\_revisited\_but\_dont\_tell\_anyone\_commentary-224674-](http://www.rollcall.com/news/congressional_insider_trading_revisited_but_dont_tell_anyone_commentary-224674-1.html) [1.html](http://www.rollcall.com/news/congressional_insider_trading_revisited_but_dont_tell_anyone_commentary-224674-1.html) [↑](#footnote-ref-2)
3. Craig Holman, *The impact of the STOCK Act on stock trading activity by U.S. senators, 2009 – 2015*, (June 22, 2017), available at: <https://www.citizen.org/wp-content/uploads/migration/case_documents/2017_stock_act_report.pdf> [↑](#footnote-ref-3)
4. *Statement from Stephanie Avakian and Steven Peikin, Co-Directors of SEC Division of Enforcement, Regarding Market Integrity* (March 23, 2020), available at: <https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity> [↑](#footnote-ref-4)
5. Dave Levinthal and Kimberly Leonard, “Conflicted Congress,” *Business Insider* (Dec. 17, 2021), available at: <https://www.businessinsider.com/conflicted-congress-key-findings-stock-act-finances-investing-2021-12> [↑](#footnote-ref-5)
6. Bryan Metzger, “67% of Americans support bill to ban stock trading by members of Congress, even as Pelosi resists,” *Business Insider* (Jan. 18, 2022), available at: <https://www.businessinsider.com/67-percent-support-stock-trading-ban-congress-pelosi-data-progress-2022-1> [↑](#footnote-ref-6)
7. The 2020 Biden campaign promulgated an internal rule in response to the scandals banning campaign staff from trading stocks without prior approval. Tyler Pager, “Biden campaign bans staff from trading stocks without approval,” *Bloomberg News* (July 27, 2020), available at: <https://www.bloomberg.com/news/articles/2020-07-27/biden-campaign-bans-staff-from-trading-stocks-without-approval> [↑](#footnote-ref-7)
8. Matt Taibbi, “After Richard Burr’s coronavirus scandal, will the government finally crack down on congressional insider trading?” Rolling Stone (March 24, 2020), available at: <https://www.rollingstone.com/politics/politics-features/richard-burr-coronavirus-insider-trading-972101/> [↑](#footnote-ref-8)
9. Federal regulations that describe the nature of qualified blind trusts note that in many cases conflict of interest concerns are likely to persist as long as all the original investments are not liquidated. As noted in 5 C.F.R. 2634.403(a)(2): “In the case of a qualified blind trust, [18 U.S.C. 208](https://www.govinfo.gov/link/uscode/18/208) and other Federal conflict of interest statutes and regulations apply to the assets that an interested party transfers to the trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than $1,000. Because the interested party knows what assets he or she placed in the trust and there is no requirement that these assets be diversified, **the possibility still exists that the interested party could be influenced in the performance of official duties by those interests.**” [Emphasis added] [↑](#footnote-ref-9)