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HOUSE COMMITTEE ON ADMINISTRATION HEARING ON
“EXAMINING STOCK TRADING REFORMS FOR CONGRESS”

MARCH 16, 2022

Chairperson Lofgren, Ranking Member Davis, and members of the Committee, thank you for the opportunity to appear before you today to address the ethics problems created when members of Congress and their families own or trade individual stocks and other securities.

Background

My organization, Citizens for Responsibility and Ethics in Washington, or CREW, is a nonpartisan anti-corruption and good government watchdog committed to ensuring that our institutions and elected officials act ethically on behalf of the people they serve. It is with this purpose in mind that I encourage you to embrace comprehensive legislation that would ban members of Congress, their spouses, and their dependent children from owning or trading individual stocks, bonds, commodities, futures, or other similar financial instruments. Any reform legislation passed by the Congress should contain bright-line rules that give clear guidance to members and their families and be accompanied by a civil penalty that is a significant deterrent and easy to administer.

In addition to these substantive priorities, Congress must also ensure that any congressional committees or federal agencies with oversight and enforcement responsibilities in this bill have the authority and resources necessary to do their job effectively and provide the American public with appropriate, transparent, and accessible information about compliance.

I applaud the members of Congress, in both parties and both chambers, who have developed numerous pieces of legislation to address this pressing issue. I also applaud the House Administration Committee and its leadership for moving expeditiously to reform stock trading by members.

The task before you now is to draft comprehensive and bold legislation that would address the entirety of the problem at hand. Thankfully, your colleagues have provided you with numerous policy proposals, many of which I encourage you to include in the text of the bill you write. It is critical that Congress rises to this moment; you have a once in a generation chance to address

financial conflicts of interest in the legislative branch of our government, and ameliorate the public crisis of confidence in government that they create.

Congressional Stock Trading Undermines Ethics and Policy Making

The threat posed by members of Congress owning and trading individual securities is not theoretical; it undermines the critical work of the entire federal government. At the beginning of the pandemic, a moment when public confidence in our institutions of government was critical, Congress was rocked by a scandal involving concerns about members trading individual stocks as Congress was receiving non-public information about the threat of COVID-19.¹ On March 19, 2020, *ProPublica* broke the news that Sen. Richard Burr (R-NC) had sold between \$628,000 and \$1.72 million in stock holdings in 33 separate transactions on February 13, 2020, two weeks before the U.S. markets crashed more than 8% on February 28, 2020.² Two other Senators, Dianne Feinstein (D-CA) and James Inhofe (R-OK), made trades that also drew scrutiny.³

Around the same time, other media⁴ outlets⁵ revealed that then-Sen. Kelly Loeffler (R-GA) and her spouse had sold up to \$3.1 million of individual securities starting on January 24, 2020, the day after she received a confidential briefing on the novel coronavirus.⁶ In that period Loeffler and her spouse also purchased between \$100,000 and \$250,000 worth of shares of the technology company Citrix, which is primarily known for its teleworking software.⁷ Then-Sen.

¹ Robert Faturechi and Derek Willis, "Senator Dumped Up to \$1.7 Million of Stock After Reassuring Public About Coronavirus Preparedness," *ProPublica*, Mar. 19, 2020, available at <https://www.propublica.org/article/senator-dumped-up-to-1-7-million-of-stock-after-reassuring-public-about-coronavirus-preparedness>.

² Covid-19 Event Timeline: How Covid-19 Virus Events Impacted the S&P 500, Valuation Research Services, <https://www.valuationresearch.com/pure-perspectives/covid-19-event-timeline/>. The U.S. stock markets began their Covid-19-linked crash on February 20, 2020, a week after Sen. Burr's sell-off. *See* <https://finance.yahoo.com/quote/%5EDJI/history?period1=1577836800&period2=1585353600&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true>.

³ Eric Lipton and Nicholas Fandos, "Senator Burr Sold a Fortune in Stocks as GOP Played Down Coronavirus Threat," *New York Times*, Mar. 19, 2020, <https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html>.

⁴ Christina Wilkie, "Two GOP senators face questions over stock sales ahead of the market's coronavirus slide," *CNBC*, Mar. 20, 2020, <https://www.cbc.com/2020/03/20/senators-face-questions-over-stock-sales-before-the-coronavirus-slide.html>

⁵ Lachlan Markay, William Bredderman, and Sam Brodey, "Sen. Kelly Loeffler Dumped Millions in Stock After Coronavirus Briefing," *The Daily Beast*, Mar. 20, 2020, <https://www.thedailybeast.com/sen-kelly-loeffler-dumped-millions-in-stock-after-coronavirus-briefing>.

⁶ United States Committee on Health, Education, Labor, and Pensions, "Senate Health Committee Announces Briefing to Update Senators on Coronavirus," Press Release of Jan. 23, 2020, <https://www.help.senate.gov/chair/newsroom/press/senate-health-committee-announces-briefing-to-update-senators-on-coronavirus>.

⁷ Markay, Bredderman, and Brodey.

David Perdue (R-GA) also purchased shares in companies that stood to benefit from the pandemic, including, for example, up to \$260,000 worth of shares of Pfizer between February 26 and 28, 2020, the middle of the market downturn.⁸ Both Senators were dogged by allegations of ethical misconduct and lost their bids for re-election less than a year later.

While these Senators' transactions were deeply problematic, as CREW explained in a letter to the Senate Select Committee on Ethics,⁹ their impact was far greater than their legal and political fallout: they conveyed to the public the impression that their representatives were profiting off their positions. And in doing so, they diminished the public's trust in their government and undermined the institutions tasked with responding to an unprecedented crisis of public health at the worst possible time.¹⁰

The Current Legal Regime is Inadequate to Track or Deter Misconduct

There could not be a better example of the real-world consequences of members of Congress trading or owning individual stocks, bonds, or other similar financial instruments. But it is by no means the only, or even the most problematic instance. *Business Insider* revealed, for example, that in 2020, at least 75 members of Congress owned shares in companies such as Pfizer, Moderna and Johnson & Johnson, that made COVID-19 vaccines, treatments, and tests.¹¹ These members were asked, repeatedly, to vote on legislation that had a direct impact on these companies' share price. Perhaps even more troubling, recent reporting indicates that at least 15 members of Congress who sat on House and Senate committees that oversee US military policy, had "financial ties to prominent defense contractors that together were worth nearly \$1 million in

⁸ Stephanie Saul, Kate Kelly and Michael LaForgia, "2,596 Trades in One Term: Inside Senator Perdue's Stock Portfolio," *New York Times*, Dec. 2, 2020,

<https://www.nytimes.com/2020/12/02/us/politics/david-perdue-stock-trades.html>.

⁹ Citizens for Responsibility and Ethics in Washington, *Letter to the Senate Select Committee on Ethics Requesting an Investigation of Sens. Richard Burr and Kelly Loeffler*, Mar. 20, 2020,

<https://www.citizensforethics.org/wp-content/uploads/legacy/2020/03/2020-3-20-Burr-and-Loeffler-insider-trading.pdf>. The Department of Justice has since closed its investigation into potential insider trading. See Ryan Lucas, "Justice Department Closes Investigations of 3 Senators; Burr Inquiry Continues," *National Public Radio*, May 26, 2020,

<https://www.npr.org/2020/05/26/862692569/justice-department-closes-investigations-of-3-senators-burr-inquiry-continues>, and Vanessa Romo, "DOJ Drops Insider Trading Investigation of Sen. Richard Burr," *National Public Radio*, Jan 19, 2021,

<https://www.npr.org/2021/01/19/958622574/doj-drops-insider-trading-investigation-into-sen-richard-burr>.

¹⁰ Kedric Payne, Delaney Marsco, and Sophia Gonsalves-Brown, "Congressional Stock Trading During Pandemic Diminishes Public Trust," *Campaign Legal Center*, Apr. 28, 2020,

<https://campaignlegal.org/update/congressional-stock-trading-during-pandemic-diminishes-public-trust>.

¹¹ Camila DeChalus, Kimberly Leonard, Warren Rojas, and Madison Hall, "As the pandemic raged, at least 75 lawmakers bought and sold stock in companies that make COVID-19 vaccines, treatments, and tests," *Business Insider*, Dec. 13, 2021,

<https://www.businessinsider.com/lawmakers-bought-sold-covid-19-related-stocks-during-pandemic-2021-12>.

2020.”¹² While some of the members reported divesting from owning individual stocks, these facts are both egregious and, sadly, unremarkable.

These very public instances where members’ individual stock holdings created conflicts of interest demonstrate the weakness of the current legal regime. The STOCK Act, passed in 2012 to bar members from trading on non-public information gained through their government jobs, give the public some insight into member finances--and to punish members who failed to disclose their holdings and transactions--has failed to deter unethical behavior. It has repeatedly proven unwieldy and hard to enforce. A recent *Business Insider* report revealed that 57 members of Congress recently violated the Act.¹³ Exposing these violations was only possible because of rigorous research conducted by media outlets and good government groups, because the access to periodic transaction reports, financial disclosures, and other documents is onerous and expensive for members of the general public. Congress’s credibility suffers a death by a thousand cuts thanks to the constant reports of STOCK Act violations. Reform is necessary to address a deficient compliance, transparency, and enforcement regime.

In the decade since the STOCK Act was enacted, there have also been significant changes in the way Congress operates that give individual members even greater ability to impact the market. Members of Congress now have a much larger presence on social media, powerful platforms that can reach millions of Americans. A member can impact corporate stock prices with a single post or tweet. A 2020 Pew Research Center study found that while “a small group of lawmakers with extremely large followings dominate the congressional social media narrative ... Congress as a whole produces a vast amount of social media content each month.”¹⁴

Since 2012, Congress has also expanded the power of committee chairs to issue unilateral subpoena authority to compel testimony and information, which has been the source of significant attention from the legal community in advising corporate clients.¹⁵ In recent years, many members have also conducted oversight as Ranking Members¹⁶ or from their individual

¹² Warren Rojas, Camila DeChalus, Kimberly Leonard, and Dave Levinthal, “At least 15 lawmakers who shape US defense policy have investments in military contractors,” *Business Insider*, Dec. 13, 2021, <https://www.businessinsider.com/congress-members-are-trading-defense-stocks-while-shaping-military-policy-2021-12>.

¹³ Dave Levinthal, “57 members of Congress have violated a law designed to stop insider trading and prevent conflicts-of-interest,” *Business Insider*, Feb. 15, 2022, <https://www.businessinsider.com/congress-stock-act-violations-senate-house-trading-2021-9>.

¹⁴ Patrick Van Kessel, Regina Widjaya, Sono Shah, Aaron Smith, and Adam Hughes, “Congress Soars to New Heights on Social Media,” *Pew Research*, Jul. 16, 2020, <https://www.pewresearch.org/internet/2020/07/16/congress-soars-to-new-heights-on-social-media/>.

¹⁵ Jamie Gorelick and Benjamin A. Powell, “Expanded Subpoena Powers in New Congress,” *WilmerHale Client Alert*, Jan. 20, 2015, <https://www.wilmerhale.com/en/insights/client-alerts/expanded-subpoena-powers-in-new-congress>.

¹⁶ See, e.g., United States Senate Committee on Homeland Security and Government Affairs, “Rising Emergency Room Costs in Missouri is Focus of McCaskill Inquiry,” Press Release of Sep. 25, 2017,

offices,¹⁷ and have added oversight staff to their personal office staff.¹⁸ While these practices bolster Congress's ability to conduct accountability and oversight, they also expand each members' ability to influence the market.

Congress must adjust its rules to keep up with these developments. Without Congressional action, the routine crises of public confidence that result from STOCK Act violations and allegations that members of Congress are overseeing industries where they have a direct financial interest based on their stock portfolio will continue to happen. And the toll they take on our government will only increase.

Let me be perfectly clear: while it is understandable that some members may have concerns about the impact of these reforms on their own portfolios or their families' interests, they also need to remember that public service is a public trust. While some members may be worried about the nuisance of these measures, or the impact they may have on their dependent children's trust structures, these concerns do not trump the public's right to know, with certainty, that the people they choose to write their laws are acting on their behalf--and not in service of their own financial interests.

CREW's Priorities for Legislative Reform

Every person in whom the people repose power, from the power to make law or declare war to the power to write a local ordinance, is bound by that basic ethical principle. Congress has an opportunity to lead and implement ethical reforms that can trickle down to state and local legislative bodies as well. With that in mind, I encourage you to develop legislation that is clear and comprehensive. By "clear," I mean that any reasonable person could understand what the legislation requires, and the means by which those requirements can be met. And by "comprehensive," I mean that the legislation must include a complete ban on members, their spouses, and their dependent children owning or trading individual stocks, bonds, commodities or other similar financial instruments.

The legislation you develop should satisfy three principles:

<https://www.hsgac.senate.gov/media/minority-media/rising-emergency-room-costs-in-missouri-is-focus-of-mccaskill-inquiry>.

¹⁷ See, e.g., Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch, 41 Opp. Office of Legal Counsel, May 1, 2017,

[https://www.justice.gov/olc/file/966326/download#:~:text=The%20constitutional%20authority%20to%20conduct,su bcommittees%20\(or%20their%20chairmen\)](https://www.justice.gov/olc/file/966326/download#:~:text=The%20constitutional%20authority%20to%20conduct,su bcommittees%20(or%20their%20chairmen)).

¹⁸ See, e.g., Yuki Noguchi, "'No Meaningful Oversight': ICE Contractor Overlooked Problems at Detention Center," *National Public Radio*, Jul. 17, 2019,

<https://www.npr.org/2019/07/17/741181529/no-meaningful-oversight-ice-contractor-overlooked-problems-at-detention-centers>.

1. It should prohibit members from trading and owning individual stocks and other similar securities;
2. The prohibition should extend to members' spouses and dependent children; and
3. It should incorporate a clear civil penalty that is easy to enforce.

Below, I discuss each of these principles and direct the Committee to the specific components of existing legislation that would best advance each principle. I encourage the Committee to craft a new bill that draws from the best individual elements of existing legislation.

Prohibit the trading or ownership of stocks and other similar securities

The legislation must include a comprehensive ban on trading or owning individual stocks and other similar securities. This prohibition is crucial because it would address three key problems: (1) the actual conflicts of interest that arise when members of Congress take official actions that impact a company or industry where they or their families have a direct financial stake; (2) the public outrage over members appearing to trade on confidential information; and (3) the appearance of financial conflicts of interest. The only way to address all three issues is by banning members and their families from trading and owning individual securities.

Anything short of a ban will not fully address the problems you have been charged with solving. Members who have a keen sense of their portfolio, or who are allowed to trade some sub-category of stocks, will still have actual and potential conflicts of interest. A ban is necessary because unlike congressional staff, or officials in other branches of government, recusal is not a viable option for Members of Congress elected to represent their constituents in the legislative branch. Only a complete prohibition will circumvent both real and perceived conflicts, and the damaging second-guessing of members that occurs when those conflicts inevitably become public. This isn't about forcing members of Congress to take a vow of poverty. There are many ways to invest money that don't come with the risk of creating conflicts, including diversified mutual or index funds. This is not a new or outlandish concept: 40% of the members of the 117th Congress already make exclusive use of these investment vehicles.¹⁹

Placing individual assets into a qualified blind trust ("QBT"), absent a requirement to sell the original assets, is not a sufficient solution to the conflicts that these assets present. In general, QBTs are a vehicle which a potentially conflicted individual could use to divest their assets without dumping their holdings at a potentially inopportune time. The individual places their assets into a QBT and the trustee in their discretion may sell the assets over a period of time to reasonably ensure that they get a fair return on their investments. The trustee is free to invest the proceeds from the sale as they see fit. At that point the trust assets would become "blind."

¹⁹ Campaign Legal Center, *Congressional Stock Trading By the Numbers - 117th Congress*, Feb. 18, 2022, <https://campaignlegal.org/document/congressional-stock-trading-numbers-117th-congress>.

But a trust is only “blind” when the beneficiary does not know what assets the trust holds, and for the QBT structure to fix the problem presented by stock ownership, it must be fully blind. This means that trustees must be directed to sell all the member’s individual stocks, and members must not be permitted to retain any individual stocks held prior to joining Congress.

While I applaud the bi-partisan and bicameral groups of representatives and senators who have introduced legislation that seeks to address this problem, one in particular stands out in this respect: Rep. Jayapal and Rep. Rosendale’s Bipartisan Ban on Congressional Stock Trading Act, H.R. 6678 (“BBCSTA” or “Jayapal-Rosendale”).²⁰ Specifically, the BBCSTA bans members of Congress from owning individual stocks, bonds, or other similar financial instruments, and requires that all members divest of all such assets within 180 days. The language is clear and the policy is comprehensive.

Extend the prohibition to members’ spouses and dependent children

The ban outlined in our first recommendation must extend to members’ spouses and dependent children, such that there is a comprehensive prohibition on members’ spouses or dependent children owning or trading individual financial assets.

The importance of extending the ban to cover members’ spouses and dependent children is self-evident: members must not be permitted to simply transfer their individual assets to a close family member to circumvent the law. A carve-out for spouses and dependent children would undermine much of the purpose of the legislation and allow the conflicts of interest that result from the ownership of individual assets to remain. This same principle holds in relation to the problem of public confidence: a spouse or dependent child who appears to profit from a member’s actions or knowledge of the market is just as damaging to the public’s perception of our government as a member profiting themselves. This restriction is also restrained, excluding other close familial relationships including members’ parents and adult children, who have also drawn public attention and ethics concern because of their financial dealings.

The legislation that best covers this policy is Sen. Ossoff and Sen. Kelly’s Ban Congressional Stock Trading Act, S. 3494 (“BCSTA” or “Ossoff-Kelly”), and its companion, Rep. Spanberger and Rep. Roy’s TRUST in Congress Act, H.R. 336.²¹ This legislation’s text is clear, and the policy is unambiguous: spouses and dependent children are held to the same standard as the members themselves.

²⁰ Specifically, subsection (b).

²¹ Specifically, Section 202(a)(2)(A)).

I understand that some also call for including senior Congressional staff in any legislation that would ban members and their close relatives from owning or trading individual financial instruments. Senior staff play a critical role in our government, and therefore exert an outsize influence on the policymaking process. There are real and serious questions about the propriety of senior Congressional staff owning or trading individual stocks, especially given the recent revelations that 182 senior staff members violated the STOCK Act.²² But these issues are materially different and substantially less concerning than those presented by members and their close relatives owning or trading individual financial instruments.

First, there is the simple, yet important, fact that members are the people whom the public has elected and entrusted with the authority to make law. While senior staff members can and often do wield a lot of influence over a member's thinking, they are not the people who vote on legislation. Members must be held to the highest standards of ethical conduct because they are the people's representatives in Washington. Staff are ultimately responsible to their employing members and can be fired or disciplined for engaging in behavior that the member believes is unethical or inconsistent with their values. Members are accountable to the public and the ethics rules should reflect these distinctions. Second, there is the practical fact that senior Congressional staff have the ability to recuse themselves to avoid working on issues that might create a conflict of interest. Members of Congress cannot recuse themselves from voting on legislation without depriving their constituents of their constitutional right to be represented in our government.

All of this counsels against including senior Congressional staff in this legislation. There is a separate issue and may require a different approach.

Incorporate a clear civil penalty that is easy to enforce

The legislation must include an enforcement mechanism that is both clear enough that members understand precisely what will happen should they violate the law, and significant enough to serve as a comprehensive deterrent. These two elements are worth discussing separately.

First, it is crucial that Members understand that they will be subject to punishment or civil penalties if they violate the act. The critical element here is the certainty that there will be accountability if they violate the law: decades of academic research demonstrate the centrality of this element to any enforcement regime.²³ This is a key problem with many of the current rules

²² Kimberly Leonard, Warren Rojas, and Camila DeChalus, "At least 182 high ranking congressional staffers have violated a federal conflicts-of-interest law with overdue disclosure of their personal stock trades," *Business Insider*, Dec. 13, 2021,

<https://www.businessinsider.com/congress-staff-violated-stock-act-conflicts-of-interest-possible-2021-12>.

²³ See, e.g., Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," The Sentencing Project, Nov. 2010,

<https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

regulating Congressional ethics: not only are the rules themselves convoluted and hard to understand, the ethics committees are often permissive in their guidance on and enforcement of violations even when they find them. This is precisely why this element is so important: members are used to a permissive Congressional ethics regime; if they believe that the ban on stock ownership is similarly dysfunctional and unenforceable, some will not take compliance seriously.

For these reasons, the legislation should not create a standard of intent that would make enforcement unworkable or unlikely. A clear and comprehensive ban on owning or trading individual financial instruments should not require that the enforcing authority prove intent at all: either the member owns an individual stock, bond, commodity, or other similar financial instrument within the prescribed period or they don't. It simply doesn't matter what the member intended. Adding an intent requirement to this legislation would only serve to make enforcement less likely; and a stringent standard, such as requiring proof that a member "knowingly" violated the act, could make the entire legislation unenforceable.

Second, the penalty for violating the ban must be substantial enough that members are actually deterred. This self-evident policy is critical in the context of regulating the ownership or trading of individual financial instruments: each transaction, each individual stock, will come with a value calculation, and if the penalty for violating the ban is negligible, then the calculation may favor violating the ban. This is the general theory of deterrence, and while it is worth evaluating its effectiveness in certain criminal justice scenarios, its value in financial circumstances is clear.

I am happy to say that this is an area of policy strength for many of the outstanding pieces of legislation. However, I would encourage the Committee to consider a hybrid approach: include each type of civil penalty, whichever is greatest. Specifically, I would recommend the civil penalties in Ossoff-Kelly and Jayapal-Rosendale, and the disgorgement of gains provision in Rep. Hartzler's Banning Insider Trading in Congress Act, H.R. 6490, whichever is greater.

Conclusion

The Committee on House Administration is tasked with developing legislation to respond to the growing crisis in public confidence arising from members owning or trading individual stocks, bonds, and other similar financial instruments. The public's justifiable and predictable outrage over the various instances at the beginning of the pandemic where members appeared to trade on confidential information has not subsided. Instead, it has fed the growing distrust in Congress as an institution.

The public is right to hold their representatives to the highest of ethical standards, and to demand accountability when those representatives fail to live up to them. Wide bipartisan majorities

believe that the Congress should hold itself accountable for these abuses by passing legislation that would impose limits on members and their families from owning and trading certain financial instruments. Designing and passing clear and comprehensive legislation that bans members of Congress, their spouses, and their dependent children, from owning or trading these financial instruments will help to address this crisis of confidence in government. And you will halt the deluge of stories documenting members' questionable stock sales that will continue to undermine confidence in Congress's commitments to ethics and democratic governance.

Thank you for the opportunity to address the Committee today. I look forward to answering your questions and working with the Committee as you design this critical legislation.