Statement to the House Committee on House Administration

Hearing:

Taking Stock of the STOCK Act

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Written Statement[1]

Chairman Steil, Ranking Member Morelle, and Members, thank you for opportunity to testify again before this Committee. My name is James R. Copland. Since 2003, I have been affiliated with the Manhattan Institute for Policy Research, a nonprofit public-policy think tank in New York City, where I have long been a senior fellow and directed the Institute's legal policy research. Although my comments draw upon such research conducted for my employer, my statement before the Committee is solely my own.

In Part I of this written testimony, I will describe the basic contours of federal insider trading law. In Part II, I will discuss the 2012 STOCK Act, which placed insider-trading-type limits on Members of Congress and certain other employees and established enhanced disclosure requirements. Part III discusses briefly various bills that have been introduced, each designed to heighten limitations on Congressional stock ownership and trading. Part IV discusses the alternatives and concludes.

I. Backdrop: Federal Insider Trading Law

Insider trading occurs when someone trades a security using material, non-public information in violation of a duty of trust or confidence. Over time, insider-trading law has moved from a concept of equal access to one based on fiduciary breach and later misappropriation, which extends to outsiders using confidential information for personal gain.

Before federal securities law, insider trading was a state-law fiduciary issue. Most states followed the "no duty" rule, which allowed corporate directors to trade without disclosure unless they committed actual fraud. A minority recognized a duty to disclose material facts.[2] The Supreme Court in *Strong v. Repide* adopted a "special facts" doctrine, imposing liability when insiders hid their identity or significant corporate developments.[3]

The Securities Exchange Act of 1934 authorized the newly created Securities and Exchange Commission (SEC) to bar "manipulative or deceptive device[s]" in securities trading. In 1942, the SEC promulgated Rule 10b-5,[4] under which insider trading as a form of federal securities fraud is predicated. In 1961, the SEC determined that corporate insiders who possess material facts known by virtue of their position—but unknown to those with whom they trade and likely to affect investment judgment—must disclose those facts before trading or abstain from trading altogether.[5] In 1968, the United States Court of Appeals for the Second Circuit

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[1] I would like to thank my Manhattan Institute associates Addison Gills and Aviv Stabinsky for invaluable research assistance. All opinions, and any errors or omissions, are of course my own.

[2] *See, e.g.*, Oliver v. Oliver, 45 S. E. 232 (Ga. 1903).

[3] 213 U.S. 419 (1909).

[4] 17 CFR 240.10b-5.

[5] *See* In re Cady Roberts & Co., SEC Securities Exchange Act Release. No. 6668, November 8, 1961, 34-6668. In *Cady, Roberts*, a broker sold stocks in Curtiss-Wright after learning from a director that the company would cut its dividend. Though there was no direct misrepresentation, the SEC deemed this "fraud or deceit" under Rule 10b-5, holding that fiduciaries may not use entrusted information for personal gain.

affirmed a relatively broad insider trading theory in *SEC v. Texas Gulf Sulphur Co.*,[6] holding that "anyone in possession of material inside information" must disclose that information or abstain from trading in securities for which it is material.

In *Texas Gulf Sulphur* and other early cases, federal courts set a fairly aggressive outer bound for 10b-5 liability predicated on the theory that investors should enjoy "relatively equal access" to market information, rather than basing insider trading law on a narrower concept of fiduciary breach. Beginning in 1980, however, the U.S. Supreme Court began reining in that theory of the law. In *Chiarella v. United States* (1980),[7] the Supreme Court held that liability under federal insider trading law arises only from a fiduciary or similar duty of trust—that mere possession of material, nonpublic information is insufficient to establish liability. In *Dirks v. SEC* (1983),[8] the Supreme Court applied a similar theory of fiduciary breach to "tippee" liability, holding that such liability is derivative and exists only if an insider breaches a fiduciary duty for a personal benefit and the tippee knows or should know of that breach.

The Supreme Court later clarified, however, that insider trading liability could extend to "misappropriation" of insider knowledge. In *United States v. O'Hagan* (1997),[9] the Court held that a law firm partner who had traded upon knowledge that a firm client was acquiring another company could be prosecuted for violating a fiduciary duty owed to a principal for personal gain and without disclosure to the source. By rooting liability in deception of the information's owner, *O'Hagan* extended Rule 10b-5 beyond "classical" insider-shareholder relationships to any fiduciary misuse of information tied to trading.

II. The STOCK Act

The Stop Trading on Congressional Knowledge (STOCK) Act of 2012[10] explicitly clarified that members of Congress are not exempt from federal insider trading law. The Act clarified that members of Congress and certain other government employees trading securities or certain other financial instruments based on non-public information gained from their official duties could constitute an insider-trading violation. The STOCK Act also heighted financial disclosure requirements for members of Congress and senior staffers, requiring disclosure of any purchase or sale of securities worth over $1,000 within 45 days of a transaction. In addition, the Act prohibits members of Congress or congressional employees from participating in initial public offerings not available to the public at large.

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[6] SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968).
[7] 445 U.S. 222.
[8] 463 U.S. 646. In 2016, the Supreme Court unanimously reaffirmed *Dirks*, *see* Salman v. United States, 580 U.S. 39. The Court also held that a gift of confidential information to a relative or close friend meets the "personal benefit" test because it is equivalent to trading and gifting the profits, and it reined in Second Circuit precedent requiring a "pecuniary gain," *cf,* United States v. Newman, 773 F.3d 438 (2014), as too narrow; familial or emotional benefits suffice when the tipper intends to benefit the recipient.
[9] 521 U.S. 642.
[10] Public Law 112–105, 126 Stat. 297.

For understandable separation-of-powers reasons, Congress is responsible for overseeing its own compliance with the STOCK Act. But Congress has been less than aggressive in working to ensure compliance. In the Senate, the Senate Ethics Committee oversees financial disclosures and compliance under the STOCK Act. No independent body exists to hold senators accountable.[11] The House has set up an independent investigatory body, the Office of Congressional Conduct, tasked with enforcing compliance. However, all its investigations are private, and it has no subpoena power.

Substantial evidence suggests that Congress may not have been adequately self-policing itself under the STOCK Act. Despite allegations of improper conduct, no member of Congress has ever been prosecuted under the Act. Investigative reports have documented hundreds of violations.[12] Most of these involve administrative errors such as missed filing deadlines rather than flagrant misconduct. Despite relatively measly first-time penalties of just $200 for missing the 45-day disclosure deadline, no public records exist indicating whether officials have ever paid statutory fines for STOCK Act disclosure errors.[13]

It is also unclear whether even proper disclosure is operating as intended to deter Members of Congress and their staffs from trading securities based on information they hold based on their government service. A 2022 investigation by the *New York Times* revealed that 97 members of Congress had traded stocks in companies impacted by their committee assignments from 2019 to 2021.[14]

All in all, the STOCK Act may or may not have fallen short of curbing improper trading practices. But it is clear that there is insufficient evidence for the public to conclude that it has done so. Unsurprisingly, overwhelming majorities of Americans—including more than 80% of all Republicans, Democrats, and Independents—tell pollsters that they support a complete ban on stock trading by Members of Congress.[15]

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[11] *See* Maya Kornberg, Congressional Stock Trading, Explained, Brennan Center for Justice, Sept 4, 2025, https://www.brennancenter.org/our-work/research-reports/congressional-stock-trading-explained.
[12] *See* Dave Levinthal & Madison Hall, "78 Members of Congress Have Violated a Law Designed to Prevent Insider Trading and Stop Conflicts-of-Interest," *Business Insider*, Jan. 23, 2023, *available at* https://www.businessinsider.com/congress-stock-act-violations-senate-house-trading-2021-9.
[13] Kimberly Leonard, Dave Levinthal & Camila DeChalus, "Congress and Top Capitol Hill Staff Have Violated the STOCK Act Hundreds of Times. But the Consequences are Minimal, Inconsistent, and Not Recorded Publicly," *Business Insider*, Dec. 15, 2021, *available at* https://www.businessinsider.com/congress-stock-act-violations-penalties-consequences-2021-12.
[14] Alicia Parlapiano, Adam Playford & Kate Kelly, "These 97 Members of Congress Reported Trades in Companies Influenced by Their Committees," *NY Times*, Sept. 13, 2022, *available at* https://www.nytimes.com/interactive/2022/09/13/us/politics/congress-members-stock-trading-list.html.
[15] *See* Program for Public Consultation, University of Maryland School of Public Policy, Ban on Stock Trading for Members of Congress Favored by Overwhelming Bipartisan Majority, July 19, 2023, https://publicconsultation.org/united-states/stock-trading-by-members-of-congress/.

III. Proposed Reforms for Congressional Securities Trading

Multiple legislative proposals have been introduced in the 119th Congress that aim to go beyond the STOCK Act and/or further restrict Members of Congress from owning or trading securities. These include:

- The Restore Trust in Congress Act (H.R.5106) (Roy).
- The End Congressional Stock Trading Act (H.R.1908) (Burchett).
- The Bipartisan Restoring Faith in Government Act (H.R. 253) (Fitzpatrick).
- The Preventing Elected Leaders from Owning Securities and Investments (PELOSI) Act (H.R.3388) (Alford).
- The TRUST in Congress Act (H.R. 396) (Magaziner).

I will describe each bill briefly and offer the Committee an analytical framework intended to assist it in evaluating these alternatives.

Restore Trust in Congress Act (H. R. 5106)

This is a rather strict bill that would require any Member of Congress to divest most securities within 180 days of enactment, or 90 days of subsequent election to office, exempting only diversified investment funds, government bonds, and small business interests. There would be limited permissions for qualifying blind trusts. And the Act's limitations would extend to spouses and dependent children. As transactions required by conflict-of-interest rules, any capital gains on asset sales would be deferred and applied to the basis of exempt assets bought with sale proceeds. Violations would incur sizable fees and disgorgement, and violations would be publicly disclosed on the Ethics Office website.

End Congressional Stock Trading Act *(*H.R.1908*)*

This bill operates very similarly to H.R. 5106, with special provisions extending divestment times for divesting from investments in certain hedge funds, venture capital funds, or other privately held complex investment vehicles. Enforcement could be brought by the Attorney General or Special Counsel and penalties would be limited to fines of up to $100,000 but would not limit prosecution or enforcement under other statutes.

Bipartisan Restoring Faith in Government Act (H.R. 253)

This bill also operates similarly to H.R. 5106. Enforcement would be by the Attorney General upon referral from the supervising ethics office. Fines could not exceed $50,000.

Preventing Elected Leaders from Owning Securities and Investments (PELOSI) Act (H.R.3388)

This bill, the Senate version of which passed out of committee, is also similar to H.R. 5106, with some significant variations. The bill applies the prohibition on ownership and purchase of securities to spouses but not under the draft's terms to dependent children. More significantly, the bill appears to lack a mechanism for deferring any realized capital gains from a sale of securities forced under the bill to comply with its provisions. Enforcement is vested in the supervising ethics committees, with disgorgement as in H.R. 5106, but less specific fines.

TRUST in Congress Act (H.R. 396)

This alternative bill would, rather than forcing sale of covered investments, require Members and their spouses and significant others to place such assets in a qualified blind trust.

IV. Analysis and Conclusion

As discussed in Part II above, there are sufficient reasons to worry that the STOCK Act may not be working as intended to deter or prevent various stock trades by Members of Congress that may create at least an appearance of impropriety—although I hasten to add that an absence of information about improprieties is not the same as evidence for same. That said, it is healthy and appropriate that Congressional leaders are thinking carefully about the proper boundaries for Congressional behavior in this space. Some questions naturally arise, many of which are implicitly considered in the various versions of legislation discussed in Part III:

- ***Should members of Congress own or trade in any individual securities, or other investment vehicles for which specialized knowledge gained from Members' public positions might create at least an appearance of insider-type benefits?*** The sort of public trust placed in Members is quite akin to the sort of fiduciary obligations placed on attorneys, which the Supreme Court has held limits stock-trading activity under a "misappropriation" theory.[16] That said, as a general rule, neither lawyers and other fiduciaries nor corporate insiders are expected to have no ownership whatsoever in the securities of corporations to which they owe duties. Of course, Congress may be a special case, with a special public trust; ownership of specific corporations' securities, or non-diverse funds, can create an appearance of impropriety even if members are not profiting from buy or sell decisions based on insider information, because said securities ownership might be thought to bias Members' voting decisions and other legislative activity in favor of personal benefit rather than the public interest.
- ***Is direct ownership enough to trigger concerns—even if a Member exercises no control over securities purchases or sales?*** The distinction between requiring that securities be moved into a blind trust and requiring that they be sold in most cases outright rests on the answer to this question. Ownership in a blind trust, if appropriately qualified, obviates concerns about stock *trading* predicated on inside information. But at least assuming that Members have information about the holdings of a trust, even if blind to its decisions, a blind trust mechanism such as that

[16] *See* O'Hagan, 521 U.S. 642, and text accompanying note 9, *supra*.

contemplated in H.R. 396 may be inadequate to assuage concerns about ownership stakes creating an appearance of bias in legislative votes or activities.

- ***What ownership should be excluded from blanket prohibitions?*** While the particulars vary somewhat across the different bills, there is mostly broad agreement that diversified mutual funds, government bonds, small businesses, and the like should not fall under a blanket ownership prohibition. Indeed, the ready availability of low-cost "market tracking" index funds and other mutual fund and exchange-traded vehicles should allow Members to maintain equity market exposure without unduly compromising personal investments—at least if not invested in certain special situation funds such as hedge funds, venture capital funds, or private equity vehicles. H.R. 1908 contemplates such special situation exceptions and creates a longer window for disposition for such vehicles. That is probably sensible, given very real liquidity constraints for many such investment products. Although such investment vehicles certainly could create real or perceived conflicts of interest, they are perhaps best addressed through disclosures and other enhanced ethics oversights rather than by shoehorning a rather-rapid sale of investment stakes for investments with real liquidity constraints.
- ***What individuals should fall under the blanket prohibitions?*** The proposed bills typically, but not universally, apply to both spouses and dependent children, as well as to Members themselves. For dependent children, I do no think there is much of any objection to extending the prohibition, especially if a Member could designate children as non-dependent for tax or other purposes to the extent necessary. For spouses, there is some added layer of complexity. Some Members may be married to spouses with significant insider or control stakes in corporations. It may be wise to think about various safe harbors in such instances. Again, the possibility of real or perceived conflicts in such cases is real, but something short of a blanket prohibition on spousal ownership may be adequately tailored to ferret out abuses, if adequate disclosures are required and other enforcement mechanisms exist.
- ***What tax treatment should be available or required for members forced to divest from securities according to new conflict-of-interest prohibitions?*** Some but not all of the bills would permit deferral of capital gains upon stock sales mandated to conflict-of-interest rules—essentially rolling over the gains realization onto the basis of newly acquired investments in diversified funds or other vehicles that comport with the new regulatory scheme's conflict-of-interest strictures. Such treatment to me would seem salutary. Although it is theoretically feasible that such a rule might benefit some Members who would prefer to rebalance portfolios without immediately realizing a capital gain, such tax treatment makes much more sense to me than essentially forcing a capital gains tax realization upon Members as a condition of being in Congress, which would seem to be the case in H.R. 3388, as drafted. Indeed, if the Committee decides on a compromise that would more leniently allow for a

blind trust in complying with ethical mandates, it may still wish to permit members to divest of individual securities completely and defer capital gains, as a viable alternative.

I encourage Members of the Committee to ask questions, which I will endeavor to answer to the best of my ability. I am also more than willing to follow up later with Members and staff. Thank you for your time and your invitation.

Additional Congressional Testimony

Statement of James R. Copland, "Problems with the Shareholder Proposal Process: ESG, Passive Investing, and Proxy Advisors—A Case for Reform," Hearing before the House Committee on Financial Services: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value, September 10, 2025, *available at* https://manhattan.institute/article/testimony-before-the-house-committee-on-financial-services-2.

Statement of James R. Copland, "The Rise of ESG Investing and the Appropriate Regulatory Responses," Hearing before the House Committee on Financial Services: Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation, July 12, 2023, *available at* https://media4.manhattan-institute.org/wp-content/uploads/Copland-Testimony-House-Financial-Services-7-12-2023-fin-rev.pdf.

Statement of James R. Copland, "Economic Growth and Efficient Capital Markets: An Agenda at Odds with Subcommittee's Bills Under Consideration," Hearing before the House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets: Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers, May 15, 2019, *available at* https://media4.manhattan-institute.org/sites/default/files/Testimony_JCopland_051519.pdf.

Statement of James R. Copland, "Who's Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets," Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, *available at* https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf.

Statement of James R. Copland, "SEC Rule 14a-8: Ripe for Reform," Hearing before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises: Hearing on Corporate Governance: Fostering a System that Promotes Capital Formation and Maximizes Shareholder Value, Sept. 21, 2016, *available at* https://media4.manhattan-institute.org/sites/default/files/T-JC-0916.pdf.

Statement of James R. Copland, Testimony before the House Financial Services Committee, Apr. 26, 2006, *available at* https://manhattan.institute/article/testimony-of-james-r-copland-before-the-united-states-house-of-representatives-committee-on-financial-services.