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Examining Stock Trading Reforms for Congress Hearing Before the U.S. House of Representatives Committee on House Administration

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Chairman Lofgren, Ranking Member Davis, and Members of the Committee: Thank you for inviting me to testify as part of your hearing on "Examining Stock Trading Reforms for Congress." My name is Donna Nagy, and I am the C. Ben Dutton Professor of Business Law at Indiana University Maurer School of Law in Bloomington, Indiana. I have been teaching and writing about corporate law and federal securities law for more than 27 years. For nearly half of that time, I have also been researching and publishing about government ethics. What first drew me to that field were the congressional insider trading controversies that resulted in the passage of the STOCK Act of 2012. In the hearings that preceded that legislation, I had the great privilege of testifying about federal insider trading law before the House Financial Services Committee and the Senate Committee on Homeland Security and Governmental Affairs.

In connection with today's hearing, what I also can bring to the table are my years of studying how conflicts of interest can undermine the legitimacy of decision-making by officials entrusted with power, as well as how the law can operate to guard against such conflicts. Indeed, whether the decision-making occurs by corporate directors inside a boardroom or by lawmakers here in the Capitol, financial conflicts of interests contribute to a corrosive belief that those entrusted with power are making decisions that may serve their own personal gain rather than the best interests of the persons they were elected to serve. I have emphasized this point in much of my scholarship, but particularly so in an article I published nearly a decade ago entitled "*Owning Stock While Making Law: An Agency Problem and a Fiduciary Solution*."[1]

This Committee has a weighty task before it. Over the last several months, at least a dozen bills relating to securities trading reforms have been introduced in the House and the Senate. As I understand it, this Committee was asked to review these proposals and develop consensus legislation that responds to the escalating crisis in confidence that has

[1] Donna M. Nagy, *Owning Stock While Making Law: An Agency Problem and a Fiduciary Solution*, 48 WAKE FOREST LAW REVIEW 567 (2013). My other articles in the area of government ethics include: *Insider Trading, Congressional Officials, and Duties of Entrustment*, 91 BOSTON UNIV. L. REV. 1105 (2011) and *Selective Disclosure by Federal Officials and the Case for an FGD (Fairer Government Disclosure) Regime*, 2012 WISCONSIN L. REV. 1285 (2012) (co-authored with Richard W. Painter). Professor Painter and I built from those articles, as well as his highly regarded work, in a December 2020 letter we co-authored to Senior Leadership of Congress, and some of my testimony draws from that letter.

arisen from lawmakers owning and trading stocks and other financial interests in companies and industries that are directly and substantially affected by legislative activity.

My testimony today strongly supports your efforts toward legislative reform, and it divides into four parts. The first part highlights what I see as the principal difference among the bills and shares my view as to the type of reform that is likely to be most effective. Part two contrasts the strict anti-conflict laws that Congress has enacted for federal officials in the executive and judicial branches with the lax conflict-of-interest restraints that operate in the legislative branch. The third part refutes the rationales put forth in the past by Congress to justify the view that lawmakers' financial conflicts are best deterred through public disclosure of personal investments and the discipline of the electoral process. And the final part discusses why, notwithstanding the clarity brought about by the STOCK Act, troubling insider-trading problems will continue to arise unless and until there is additional legislative reform.

I. Effective Reform Requires an Outright Prohibition on the Ownership of Securities in Publicly Traded Companies

There is one key difference in the many bills I have reviewed in preparation for this hearing: whereas some of the bills seek to restrict the *ownership* of certain securities and other financial investments by Members of Congress, other bills seek to restrict only the *trading* of certain investments while a member is serving in Congress. In my view, trading restrictions alone will not be an effective solution to the conflict-of-interest problem that is plaguing Congress and fostering the public perception of widespread corruption. What is needed is legislation that reduces the widespread belief that—whether accurate or not—many lawmakers are seeking to generate gains and avoid losses in their portfolios when they sponsor, support or oppose, and ultimately vote on legislation. I urge this Committee to focus on the problem of the ownership of certain investments, and not merely the trading of such instruments.

What is most needed, in my opinion, is a federal statute that prohibits Members of Congress and their spouses and dependent children from owning the securities of individual publicly traded companies as well as certain other financial investments that likely will conflict with their official duties. Senior staff of Members of the House and Senate, as well as senior staff of House and Senate committees, should likewise be required to divest, although more flexibility could be given to staff members who choose to recuse from a particular matter as an alternative to divestment. Members of Congress should be available to vote on matters before Congress, but staff members can more easily recuse if divestment is burdensome for them or for a spouse.

Because the reform I favor would mandate outright divestment of individual stocks and certain other investments, I would also suggest coupling that requirement with a provision enabling congressional officials and spouses/dependent children to convert

the proceeds from their sales of individual stocks and other proscribed investments into either diversified investment funds that are widely held or Treasury securities while deferring any capital gains taxes until they sell those new investments. Congress has previously amended the tax code to allow for the deferral of capital gains when an executive branch official converts assets into permissible investments to avoid conflicts of interest,[2] and fairness should dictate that a similar provision apply to the legislative branch.

As an alternative to requiring outright divestment of individual stocks and certain other financial investments, multiple bills under consideration would instead permit Members of Congress to hold such assets in a "qualified blind trust" (QBT). Although the use by Members of QBTs would adequately address the serious concerns about congressional insider trading, the placement of accumulated assets into QBTs is only a minimally effective anti-conflict measure because the trust will not actually be blind to the Member unless and until the trustee sells off all the original assets and purchases new ones in their place. As such, QBTs will not do much to reduce the public perception that lawmakers sponsor and vote for bills to increase the value of their investments. QBTs are also complicated to organize and expensive to maintain, which may explain why fewer than a dozen Senators and Representatives currently utilize QBTs. In addition, there is little reason to be optimistic about Congress's ability to adequately monitor compliance with the terms of so many additional QBTs. Press reports indicate that the STOCK Act's 45-day reporting requirement for securities transactions is routinely disregarded by congressional officials with little consequence. Accordingly, the logistical challenges that would be presented by widespread use of QBTs in Congress seem immense.

Moreover, whether or not held in a QBT, there is no compelling financial reason to own individual stocks today, and only a small fraction of the U.S. public (about 15%) does so. Modern portfolio theory holds that most stocks are efficiently priced based on publicly available information—there being no obvious "bargains" to be had in publicly traded markets. To the extent there are such bargains to be found, it is also likely that many professional portfolio managers at mutual funds are much better stock pickers than some of the trustees of the QBTs who would be looking to be compensated generously for their services in selling the lawmakers' original assets and in purchasing and trading the assets that would be kept blind. And it is almost certainly the case that professional portfolio managers at mutual funds are much better stock pickers than individual Members of Congress who are both complying with federal insider trading law and not using their legislative activity to affect the value of the companies in which they hold investments.

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[2] See RICHARD W. PAINTER, GETTING THE GOVERNMENT AMERICA DESERVES: HOW ETHICS REFORM CAN MAKE A DIFFERENCE (Oxford U. Press 2009) at 42 (discussing 5 CFR 2634.1006's provision for a rollover into permitted property).

II. Stringent Anti-Conflict Laws Apply to Executive and Judicial Branch Officials, Whereas Congress Has Not Only Tolerated But Also Facilitated its Own Members' Financial Conflicts

Federal officials—whether elected or appointed—are entrusted with political power, and they are thus expected to place the public's best interest ahead of their own self-interest. The U.S. Constitution refers in multiple places to "public Trust"[3] and to public offices being "of Trust."[4] The Constitution also includes several provisions expressly designed to guard against self-interested decision-making.[5] Anti-conflict measures were much on the minds of the framers because, as James Madison explained in *The Federalist*:

> The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.[6]

Congress has built on this constitutional conception of a public office as a public trust across a wide range of federal ethics statutes, which employ a variety of mechanisms for keeping government officials "virtuous."

I will focus first on the executive branch. Financial conflicts of interest that could possibly bias an executive official's decision-making are addressed most directly in 18 U.S.C. § 208, a broad statute entitled "Acts Affecting a Personal Financial Interest." It prohibits any officer or employee of the executive branch (other than the president and vice-president) as well as any official or employee in an independent agency from participating "personally and substantially" in a "particular matter" having a direct and predictable effect on the financial interest of the employee, the employee's spouse or minor child, or on the financial interest of entities of which the official is a partner, director, or trustee. Section 208 thereby criminalizes conflicts created by personal investment holdings, even if the investment would be extremely unlikely to influence an officer or employee's official action. Executive branch officials have two alternatives: either recuse or divest whenever one's participation in a matter could implicate one's own financial self-interest, unless an exemption is available.[7] As the Supreme Court has

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[3] U.S. CONST. art. VI, cl. 3.

[4] *Id.* art. I, § 3, cl. 7; *id.* art. I, § 9, cl. 8; *id.* art. II, § 1, cl. 2.

[5] *See, e.g.*, *id.* art. I, § 9, cl. 8 ("[N]o Person holding any Office of Profit or Trust under [the United States] shall, without the Consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."); *id.* art. I, § 6, cl. 2 (prohibiting Members of Congress from being appointed to a federal office that was created or that received an increase in salary during their time in Congress).

[6] THE FEDERALIST NO. 57 at 327 (James Madison).

[7] See Nagy, *Owning Stock While Making Law*, *supra* note 1, at 580 n. 71 (discussing the four exemptions in 18 U.S.C. § 208(b), which include a waiver issued by a supervisor after full disclosure of the possible

emphasized, the statute is "directed not only at dishonor, but also at conduct that tempts dishonor. . . .[It] is more concerned with what might have happened in a given situation than with what actually happened."[8]

Although there is not a single government-wide statute that requires executive officials to divest financial holdings in circumstances where the disqualification required under § 208 would fundamentally interfere with their government responsibilities, there are a host of agency-specific statutes that do require divestment. For example, Federal Communications Commission (FCC) employees are prohibited from holding financial interests in any company engaged in the business of radio or wire communication.[9] Moreover, agencies themselves have broad congressionally-granted authority to issue regulations prohibiting agency employees from specific categories of financial investments where such an interest "would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered."[10]

Federal judges are likewise prohibited by a federal statute, 28 U.S.C § 455, from hearing any case or controversy in which their "impartiality might be reasonably questioned." The statute further mandates recusal when a justice or judge, or a spouse or minor child, has a financial interest in a case. Financial interest is defined broadly to encompass even a single share of stock in a party before the court or in a company substantially affected by the subject matter in controversy.[11]

For its own Members and most of its officers and employees, however, Congress has deemed prophylactic rules that guard against self-interested decision-making to be unwarranted. To be sure, both the Senate and House have ethics rules that prohibit Members (and employees and officers) from deriving personal financial benefits from the use of their official positions. But longstanding interpretations of those rules allow Members to work and vote on legislation impacting their own personal investments provided they are not the sole beneficiaries or part of an individualized class of beneficiaries. It is this sole beneficiary gloss that effectively insulates lawmakers from the loyalty obligations that would otherwise operate to restrict their personal investment practices. Indeed, the fiduciary duty of loyalty has both an anti-conflict component and an avoidance component, and the latter prohibits fiduciaries unable to recuse from "putting themselves in a position where, because of conflict or other concerns, they could

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conflict, and the Office of Government Ethics adoption of a de minimis exception for holdings in an issuer's stock valued at $15,000 or less).

[8] United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549-50 (1961).

[9] 47 U.S.C. § 154(b)(2)(A)(ii).

[10] 5 C.F.R. § 2635.403(a).

[11] 28 U.S.C. § 455(d)(4). The statute also makes clear that federal justices and judges have a duty to inform themselves about their personal financial interests and those of their spouse and minor children. *Id.* § 455(c).

not act on behalf of the beneficiary."[12] Thus, as Congress has rationalized, stock-investment conflicts need not be avoided because legislation that impacts publicly traded companies and industries almost by definition also affects thousands and sometimes millions of investors.

Consider first House Rule 3, which provides that Members should not vote if they have "a direct personal or pecuniary interest" in the legislation at hand.[13] The theoretical breadth of this provision has been practically undercut by House precedents emphasizing that financial interests are disqualifying only when a member's vote affects him or her directly as an individual and not merely as one of a class. Accordingly, the House Ethics Manual observes that "[a]s a general matter. . . Members and employees need not divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests."[14] The Manual also makes clear that "[n]o federal statute, regulation, or rule of the House absolutely prohibits a member or House employee from holding assets that might conflict with or influence the performance of official duties."[15]

Senators are likewise prohibited from using their legislative power to advance their own personal interests. Rule 37(4) of the Senate Code of Official Conduct prohibits a Senator from knowingly using "his official position to introduce or aid the progress or passage of legislation, a *principal purpose* of which is to further *only* his pecuniary interest" or those of "his immediate family" or a "limited class" to which they belong. The Senate Ethics Manual aptly describes this prohibition as "narrow" and candidly acknowledges that "[l]egislation may have a significant financial effect on a Senator because his holdings are involved."[16] Yet, as long as the legislation "has a broad, general impact on his state or the nation," Rule 37(4) does not prevent Senators "from voting on the legislation or playing an active role in advancing or blocking its passage."[17] The Manual goes so far as to convey an "*understanding* that the votes cast by Senators and Congressman are predicated on their perceptions of the public interest and the public

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[12] Kathleen Clark, *Do We Have Enough Ethics in Government Yet?: An Answer from Fiduciary Theory*, 1996 U. Ill. L. Rev. 57, 71 (1996).

[13] CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. Doc. No. 112-161, at 934-35 (2013). Rule 23(3) of the House Code of Official Conduct likewise provides that Members "may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress."

[14] H. COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL at 247 (2008).

[15] *Id.* at 248.

[16] STAFF OF S. SELECT COMM. ON ETHICS, 108TH CONG., SENATE ETHICS MANUAL at 69 (COMM. PRINT 2003)

[17] *Id.*

good, not on personal pecuniary interest."[18] It is particularly peculiar for an *ethics manual* to include such a presumption.

The Senate Ethics Manual's presumption of virtuous decision-making, however, is not carried forward to most staff employed by Senate Committees. That is, Senate Rule 37(7), enacted in 1977, requires a committee staff employee "to divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works" unless given written permission by the Ethics Committee to retain such holdings.[19] This disparate treatment is said to be justified because "committee staff members hold positions of responsibility" but "unlike Senators, committee staff are not publicly accountable, and despite public financial disclosure, their affairs are unlikely to get the same kind of scrutiny from the public and the press as Senators."[20]

Members of Congress have taken full advantage of the ethics rules and norms that currently function, at least with respect to stocks in publicly traded companies, as safe harbors for their personal investments. The result is that despite all the harsh media attention and Congress's dismal public approval ratings, lawmakers continue to own and actively trade securities totaling hundreds of millions of dollars in companies directly impacted by legislative actions. Beyond that, the membership of many congressional committees holds disproportionately large investments in the industries subject to their oversight. The lack of parity among the three branches of government underscores the urgent need for legislative reform.

III. Public Disclosure of Personal Investments and the Discipline of the Electoral Process Do Not Constitute Effective Conflict-of-Interest Restraints

In the past, it has been the public's interest in democratic representation that has been used, quite ironically, to justify Congress's casual tolerance of its Members' financial conflicts. That is, it is frequently emphasized that the citizens of this country are "entitled to have their elected representatives represent them by voting and fully participating in all aspect of the legislative process."[21] Recusal of potentially self-interested decision-makers, which is an anti-conflict mechanism often utilized by executive branch officials and federal judges, is therefore eschewed as an acceptable alternative for eliminating the self-interest that could arise from the holdings in a lawmaker's investment portfolio.

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[18] *Id.*

[19] Senate Rule 37, § 7, reprinted in SENATE ETHICS MANUAL at 322. The rule applies to committee staff earning more than "$25,000 per annum and employed for more than ninety days in a calendar year." *Id.*

[20] S. SPECIAL COMM. ON OFFICIAL CONDUCT, SENATE CODE OF OFFICIAL CONDUCT, S. REP. NO. 95-49, at 44 (1977)

[21] SENATE ETHICS MANUAL at 69.

Notably, the House Ethics Manual expressly raises the divestment alternative to recusal and describes the divestment requirement as "impractical" and "unreasonable."[22] It explains:

> Members of Congress enter public service owning assets and having private investment interests like other citizens. Members should not "be expected to fully strip themselves of worldly goods." Even a selective divestiture of potentially conflicting assets could raise problems for a legislator. Unlike many officials in the executive branch, who are concerned with administration and regulation in a narrow area, a Member of Congress must exercise judgment concerning legislation across the entire spectrum of business and economic endeavors. Requiring divestiture may also insulate legislators from the personal and economic interests held by their constituencies, or society in general, in governmental decisions and policy.[23]

But particularly in the context of today's lawmakers and their current financial investments, each of the above concerns regarding conflict avoidance through divestment rings hollow. First, a prohibition against holding securities in publicly traded companies would allow lawmakers to possess "worldly goods" in the form of shares in diversified investment funds that are widely held as well as in government securities. Moreover, while lawmakers may function as generalists when casting floor votes on a bill, much discretionary decision-making occurs at the committee level, where lawmakers function much more as specialists, charged with overseeing particular industries. And rather than "insulating" lawmakers from their constituents' interests, in view of the sliver of the public that owns stock in individual companies, permissible investment alternatives such as diversified mutual and index funds and Treasury securities would align constituent and member interests to a substantially greater degree.

With the divestment restraint dismissed largely through mistaken hyperbole, it is no wonder that the House Ethics Manual continues to reflect a conclusion that lawmakers' "conflicts of interest are *best* deterred through disclosure and the discipline of the electoral process."[24] Yet, while that conclusion may have been worthy of credence four decades ago in the wake of the enhanced ownership disclosures mandated by the Ethics in Government Act of 1978,[25] and while the STOCK Act's enhanced transaction-reporting requirements may have fueled some new justifiable hope in 2012,[26] it is now

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[22] HOUSE ETHICS MANUAL at 250.

[23] *Id.*

[24] HOUSE ETHICS MANUAL at 251 (emphasis added) (quoting HOUSE COMM'N ON ADMIN. REVIEW, FINANCIAL ETHICS, H. DOC. 95-73, at 9 (1977)).

[25] See *id*., H. DOC. 95-73, at 9 (expressing the Commission's belief that disclosure and electoral discipline were the best approaches to conflicts "in the case of investment income").

[26] See 158 Cong. Rec. S309 (daily ed. Feb. 2, 2012) (statement of Senator Joseph Lieberman opposing an amendment to the STOCK Act that would have required divestment of individual stocks, and arguing the

clear that the increased transparency has not, in fact, sufficiently deterred lawmakers from owning and trading stock in companies subject to their oversight. If anything, it has made the problem worse because, thanks to journalists and good-government groups, the American public now sees even more quickly how frequently and extensively some lawmakers are benefitting from their own legislative activity.

Although there have been some recent and high-profile exceptions, Members' constituencies have proven to be quite tolerant (at least at the ballot box) even in instances where a member's glaring conflicts of interest were evident. Incumbents in Congress clearly "have an advantage over anyone who challenges their authority."[27]

Moreover, as a leading political science scholar has pointed out, not only is "letting members disclose and voters decide" an ineffective approach in practice, it is also "deficient in principle" because it is grounded in a "mistaken view of democratic representation."[28] Whereas a lawmaker's self-interested legislative activity can affect the entire country, only voters in that representative's district or a senator's state actually have a say in whether financial conflicts of interest are troubling enough to warrant an electoral defeat.[29]

IV. Notwithstanding the STOCK Act, Insider Trading Remains a Serious Concern That Would Dissipate if Congressional Officials are Prohibited From Owning Securities in Publicly Traded Companies

Illegal insider trading involves the use in securities trading of material nonpublic information that is misappropriated from the source of the information in violation of a relationship of trust and confidence. Government employees, like private-sector employees of banks, law firms, and corporations, often are entrusted with material nonpublic information and violate the law if they use this information for securities trading without first disclosing to their principals their intent to trade. Elected officials also are in a relationship of trust and confidence with the government and its citizens and can incur insider trading liability with respect to the material nonpublic information they learn in the performance of official duties. This point already should have been clear from the fiduciary character of federal office and the federal case law interpreting Section 10(b) of the Securities Exchange Act and Rule 10b-5. But to remove any doubt, Congress

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public's increased "access to information about our holdings and our transactions . . . ought to be enough to guarantee the public . . . to make sure we are following the highest ethical norms").

[27] PAINTER, *supra* note 2, at 8-10.

[28] DENNIS F. THOMPSON, ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION at 137 (1995)

[29] See *id.* at 138 (emphasizing that "citizens rightly take an interest in the ethical conduct of all members, not only of their own representative").

enacted the STOCK Act, which amended the Securities Exchange Act to provide that a Member of Congress and any officer or employee "owes a duty arising from a relationship of trust and confidence to Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person's position . . . or gained from the performance of such person's official responsibilities."[30]

One of several difficulties with the application of insider trading law to congressional officials is that trading on the basis of material nonpublic government information will often be difficult to prove. Discerning whether a member of Congress or a staff member was in possession of such information requires trained investigators, probably from the Securities and Exchange Commission (SEC) or from the Department of Justice, to obtain copies of and review emails, phone logs, and testimony of witnesses who know what information was disclosed to the member and when. Such an investigation, among other issues, raises complicated issues under the Speech or Debate Clause of the Constitution,[31] and even if constitutionally permissible is very likely to encounter strong pushback from congressional leadership.

There have been several high-profile instances of such pushback, and because the investigative phase of SEC and DOJ insider-trading investigations is generally confidential, there may well have been others. One of the most troubling instances began just 20 months after the enactment of the STOCK Act. The SEC in early 2014 sought documents from the House Ways and Means Committee as well as documents and testimony from a former staff director of the Committee's health subcommittee. The staff director was suspected of possibly tipping a so-called political intelligence consultant about yet-to-be announced changes in payment rates for physicians serving Medicare patients. But counsel for the House initially refused to cooperate voluntarily and then sought to block the SEC's investigatory subpoenas. One of the House's legal arguments was that the sovereign-immunity doctrine bars the enforcement of an inter-branch subpoena. Its other key argument was that the information sought in the insider-trading investigation was protected by the Speech or Debate Clause. Although the federal district judge ruled partially in the SEC's favor,[32] the litigation continued as House counsel

[30] Section 21A(g) of the Securities Exchange Act, 15 U.S.C. § 78u-1(g).

[31] Article I, Section 6, Clause 1 of the Constitution provides that Members of Congress "shall in all Cases, except Treason, Felony and Breach of the Peace be privileged from Arrest during their attendance at the Session of their Respective Houses, and in going to and from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

[32] See SEC v. House Committee on Ways and Means and Brian Sutter, 161 F.Supp.3d 199 (S.D.N.Y. 2015) (ruling against the sovereign-immunity claim, but holding that certain sought-after documents and aspects of testimony were within the "sphere of legitimate legislative authority" and thus fell within the Speech or Debate Clause's protection).

appealed to the Second Circuit. The dispute was not resolved until nearly three years from the start of the SEC's investigation, when the parties announced their stipulation "to seek the dismissal of the appeal."[33] It is hardly surprising that, in the view of some, the practical and constitutional hurdles involved in a congressional insider-trading investigation "make prosecution impossible for [trading based on] certain types of information received officially in committee or other legislative settings."[34]

Another consequence of the operation of federal insider trading law is that congressional officials who own securities in individual companies, when confronted with a conflict of interest, also may not be able to sell the securities to resolve the conflict without risking liability for a violation of Section 10(b) and Rule 10b-5 of the Exchange Act. If material nonpublic information is disclosed to officials at the time they become aware of a conflict of interest, it may be too late to sell the securities and recusal may be the only option that is both legal and ethical.

Many of these insider-trading problems would be avoided if the Member or senior staff person did not own securities in publicly traded companies to begin with. Given the wide range of matters that come before Congress, and in view of Congress's increasing involvement with financial markets and private-sector businesses (such as banks, health care/providers, and automobile manufacturers), this reason is yet another one for Members to divest of individual stocks and certain other investments upon entering Congress and to remain divested until they depart.

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I will conclude by emphasizing how appearances alone can foster corrosive beliefs that personal financial interests are routinely placed ahead of the public interest. Even if Members of Congress are not influenced by personal finances in sponsoring bills or casting votes, ownership of securities affected by legislation creates the appearance of corruption. And even if a Member does not trade on material nonpublic government information, the public may suspect otherwise. Such perceptions are typically magnified in election years when opponents feature allegations of financial conflicts and out-sized securities trading profits in attack ads. Instilling public confidence in Congress requires lawmakers to impose upon themselves certain prophylactic rules that guard against financial conflicts and reinforce obligations of loyalty and trust—and that should include

[33] See Martin O'Sullivan, *House, SEC Drop Health Care Subpoena Fight at 2d Circ*., Law 360 (November 14, 2016).

[34] Stanley M. Brand, *DOJ Drops Investigation Into Three Senators for Insider Trading, Burr Probe Continues*, The Conversation (Apr. 2, 2020).

a federal statute prohibiting ownership of publicly traded securities as well as certain other financial investments that will likely conflict with official duties.

Today's hearing constitutes a monumental step toward bringing about real and profound change in the ethical norms and conflict-of-interest restraints that will apply to Congress. I am truly honored to be a part of it, I look forward to your questions, and I stand ready to be of whatever help I can as the legislative process progresses. Thank you very much.