



September 22, 2021

Chairman Mike Barnes
Co-Chairman Paul Vinovich
Office of Congressional Ethics
425 3rd Street, SW Suite 1110
Washington, DC 20024

Sent via email (oce@mail.house.gov)

Dear Chairman Barnes and Co-Chairman Vinovich:

Campaign Legal Center (“CLC”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate Rep. Cynthia (“Cindy”) Axne for a possible violation of the STOCK Act and House rules. In 2019 and 2020, Rep. Axne appears to have purchased and sold more than 40 assets with a total value ranging from approximately \$43,043 to \$645,000 without disclosing the transactions.¹ While Rep. Axne disclosed the ownership of these assets on her annual financial disclosures, she did not file any corresponding periodic transaction reports (“PTRs”). A preliminary OCE investigation is required to determine whether the differences in Rep. Axne’s 2019 and 2020 reports are the result of reportable transactions. If so, Rep. Axne would have been required to file PTRs pursuant to the STOCK Act and House rules.

The STOCK Act does not excuse failing to file PTRs for reportable transactions, yet members of Congress are avoiding scrutiny of the nature of their stock trades by not timely disclosing the transactions throughout the year. Instead, they disclose the ownership of assets in their annual reports without disclosing the underlying transaction at the time the transaction occurred. This trend could quickly defeat one of the purposes of the STOCK Act, which is real time disclosure of potential conflicts of interest. If

¹ The Honorable Cynthia Axne, Annual Financial Disclosure Report for Filing Year 2019, Clerk of the House of Representatives (filed Nov. 5, 2020)(“2019 financial disclosure”); The Honorable Cynthia Axne, Annual Financial Disclosure Report for Filing Year 2020, Clerk of the House of Representatives (filed July 15, 2021)(“2020 financial disclosure”).

members are not held accountable for failing to file PTRs, many will continue to wait until their annual financial disclosures to reveal stock trades and pay nominal late fees, thereby circumventing the STOCK Act.

When members of Congress trade individual stocks and fail to disclose those trades, they break the law and diminish the public's trust in government. The recent prevalence of STOCK Act violations in the House shows that merely the threat of a fine is not deterring members of Congress from breaking the law; real accountability is necessary. As members of Congress craft laws that directly impact the lives of all Americans, the public must be able to trust that representatives are acting in the public's interest, and not in their own financial interest.

The STOCK Act and House Rules Require Members of Congress to Timely Report All Individual Stock Transactions

The STOCK Act amended the Ethics in Government Act of 1978 (“EIGA”) to require members of Congress to report their individual stock transactions no “later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction”²

House rules incorporate these reporting requirements. House Rule 26, clause 2 states, “[f]or the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.”³

The House Committee on Ethics trains and reminds members of Congress annually in writing of the consequences of failing to file PTRs. Specifically, the Committee on Ethics advises:

“[e]ach Member, officer, and senior staffer is responsible for the completeness and accuracy of the information contained in the individual's PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a statement or fails to file a statement required by the EIGA. The maximum

² P.L. 112-105, Section 6; 5 U.S.C. App. 4 § 103(l).

³ RULES OF THE HOUSE OF REPRESENTATIVES OF THE U.S. 116TH CONG. (2019), Rule 26, cl. 2.

civil penalty is \$61,585. The maximum criminal penalty is up to one year in prison and a fine of up to \$61,585.”⁴

In addition, the Committee on Ethics advises that 18 U.S.C. § 1001 is applicable to PTRs. “That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.”⁵

Rep. Axne’s Annual Disclosures Reflect Changes in Her Stock Portfolio That Do Not Have Corresponding PTRs

According to Rep. Axne’s annual financial disclosures for 2019 and 2020, her asset holdings went through significant changes, yet no transactions were reported. Twenty-eight assets appear on Rep. Axne’s 2019 financial disclosure that do not reappear on her 2020 disclosure.⁶ It therefore appears that Rep. Axne sold those assets but failed to report the transactions as required. Similarly, 15 assets appear for the first time on Rep. Axne’s 2020 financial disclosure.⁷ Because those assets do not appear on her 2019 disclosure, it appears that Rep. Axne purchased those assets but failed to report the transactions as required. The assets in question have a total value ranging from approximately \$43,043 to \$645,000.

Under certain rare circumstances an asset purchased during the reporting period may appear on an annual financial disclosure report, but not require a PTR. Specifically, a PTR may not be required if the initial stock purchase was below the reporting threshold: transaction amounts that exceed \$1,000. That asset may then appear on a subsequent annual report if the value appreciated above the reporting threshold during the reporting period. To know whether this exception applies, an OCE preliminary review is needed to determine the value of each of Rep. Axne’s initial transactions.

⁴ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS 116TH CONG., Memorandum from Committee on Ethics for All Members, Officers, and Employees Regarding Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement at 3 (June 11, 2020), https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.1.2020%20Final.pdf.

⁵ *Id.* at 3.

⁶ Rep. Axne’s 2019 and 2020 financial disclosures, *supra* note 1.

⁷ *Id.*

Rep. Axne May Have Knowingly Violated the STOCK Act

The changes in Rep. Axne's assets encompass stock in Visa, Mastercard, Wells Fargo, and SS&C Technology Holdings, a financial technology company.⁸ If these changes are the result of reportable transactions, the trades would have occurred while Rep. Axne was a member of the House Committee on Financial Services.⁹

If Rep. Axne's failed to file required PTRs, an investigation is needed to determine whether that failure was an attempt to avoid scrutiny of trades connected with non-public information or with potential conflicts of interest.

Failure to file PTRs by Rep. Axne is unlikely to be merely an oversight. Two factors suggest that Rep. Axne was in fact aware of the requirement prior to the filing of her PTRs and may have knowingly avoided disclosing her stock trades at the time they were made.

First, Rep. Axne was required to attend mandatory ethics training for new members of Congress in 2019, as well as subsequent annual ethics training.¹⁰ This training includes discussion of financial disclosures and the STOCK Act. The Committee on Ethics does not grant extensions for completing ethics training.¹¹ Therefore, it seems likely that Rep. Axne was aware of the requirement to report her transactions at the time they occurred.¹²

Second, even if Rep. Axne asserts that she did not know of the PTR requirements at the time of the trades, despite having undergone contemporaneous training that explained the requirements, she *should have known* about the disclosure requirements. High profile insider trading allegations engulfed several senators in March 2020 and became widely publicized.¹³ These allegations of STOCK Act violations were all based on information disclosed in PTRs. Then, another scandal involving STOCK Act violations came to light: Rep. Donna Shalala failed to file PTRs for numerous

⁸ *Id.*

⁹ Rep. Cindy Axne, *Committees and Caucuses*, <https://axne.house.gov/about/committees-and-caucuses> (last visited Sept. 21, 2021).

¹⁰ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *Training*, <https://ethics.house.gov/training>.

¹¹ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, <https://ethics.house.gov/legislation/schedule/faqs-about-training>.

¹² Rep. Axne's 2019 and 2020 financial disclosures, *supra* note 1.

¹³ *See e.g.*, Aruna Viswanatha & Dave Michaels, *Justice Department Investigating Lawmakers for Possible Insider Trading*, WALL ST. J (Mar. 31, 2020), https://www.wsj.com/articles/justice-department-investigating-lawmakers-for-possible-insider-trading-11585586365?mod=article_inline.

transactions.¹⁴ Considering that the requirement for PTRs in Congress was headline news throughout 2020, it seems unlikely that she was unaware of the disclosure requirements at the time of the transactions.

For these reasons, Rep. Axne cannot excuse her failure to report with a claim that it she was unfamiliar with the financial disclosure requirements. An OCE preliminary review can gather information to determine whether Rep. Axne knowingly violated the STOCK Act.

Conclusion

The STOCK Act requires members of Congress to file PTRs for any individual stock trades.¹⁵ Based on the available facts, there is probable cause to believe that Rep. Axne was aware of this requirement, and her failure to timely file the transaction reports violates the STOCK Act.

CLC respectfully requests that OCE open a preliminary review to determine whether Rep. Axne's nondisclosure was an intentional violation of the STOCK Act and House rules.

We acknowledge that 18 U.S.C. § 1001 applies to the information provided.

Sincerely,

_____/s/_____
Kedric L. Payne
General Counsel and Senior Director,
Ethics

¹⁴ Alex Daugherty, *Donna Shalala, again, failed to disclose stock sales in violation of federal law*, MIAMI HERALD (Sept. 28, 2020), <https://www.miamiherald.com/news/politics-government/article246072375.html>. Rep. Shalala reportedly paid a \$1,200 fine after describing the omission as the result of trades made to establish a blind trust in coordination with the Committee on Ethics. In contrast, the current evidence does not suggest that Rep. Axne's failure to report should only result in a small fine because she does not have a blind trust and has not stated that she failed to disclose her trades on advice from the Committee on Ethics.

¹⁵ P.L. 112-105, *supra* note 3; see U.S. HOUSE COMM. ON ETHICS, Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports Calendar Year 2019 at 41, *available at* <https://ethics.house.gov/sites/ethics.house.gov/files/documents/CY%202019%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs.pdf> (Stating that the relevant factor for disclosure is ownership of the stock: "In general, you must report on a PTR each purchase, sale, or exchange involving stocks, bonds, commodities futures, or other securities **owned wholly or in part by you**, your spouse, or your dependent child when the amount of the transaction exceeds \$1,000.") (emphasis added).

_____/s/_____
Delaney N. Marsco
Senior Legal Counsel, Ethics