



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](mailto: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. Warren Davidson for a possible violation of the STOCK Act and House rules. In August and September 2020, Rep. Davidson appears to have sold and purchased Workhorse Group stock, worth between \$50,001 and \$100,000. Although Rep. Davidson disclosed these transactions on his annual financial disclosure,<sup>1</sup> he failed to timely report them in his periodic transaction reports (“PTRs”), as required by the STOCK Act and House rules. An OCE investigation is necessary to determine whether his failure to file was knowing and willful.

The STOCK Act requires members of Congress to promptly disclose stock trades, yet certain members are not disclosing their trades by claiming that they are unaware of the transactions. The harm is that this trend could quickly defeat one of the purposes of the STOCK Act, which is real time disclosure of potential conflicts of interest. If members are not held accountable for failing to disclose stock trades, many may simply wait until their annual financial disclosures to reveal stock trades and pay nominal late fees, thereby circumventing the STOCK Act.

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<sup>1</sup> The Honorable Warren Davidson, Annual Financial Disclosure Report for Filing Year 2020, Clerk of the House of Representatives (filed Aug. 13, 2021), [https://disclosures-clerk.house.gov/public\\_disc/financial-pdfs/2020/10040160.pdf](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10040160.pdf) (“2020 financial disclosure”).

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 . . .”<sup>2</sup> The House Committee on Ethics (“Committee on Ethics”) explains that the report should include “[p]urchase and sale transactions involving assets held within managed accounts, brokerage accounts, and retirement accounts, such as 401(k) plans and IRAs . . .”<sup>3</sup>

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

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

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

<sup>4</sup> 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%206.11.2020%20Final.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.11.2020%20Final.pdf).

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.”<sup>5</sup>

### **Rep. Davidson Failed to File Timely Periodic Transaction Reports in 2020**

On August 28, 2020, Rep. Davidson sold 3,600 shares of Workhorse Group stock, worth between \$50,001 and \$100,000, but did not file a PTR within 45 days of the transaction, as is required.<sup>6</sup> On September 21, 2020, he purchased the same stock, with a transaction value between \$15,001 and \$50,000.<sup>7</sup> This transaction also was not disclosed on any PTR. Rather, the transaction was only disclosed in Rep. Davidson’s 2020 financial disclosure report, filed nearly a year later in 2021.<sup>8</sup>

Rep. Davidson’s September 21, 2021 trade is in an account described as “Schwab IRA.” Although it is unclear from the public filing, the purpose of this description may be to imply that Rep. Davidson did not make the investment decisions and therefore did not need to file PTRs. This description alone does not exempt Rep. Davidson from filing PTRs for two reasons. First, guidance from the Committee on Ethics on PTRs is clear that “[p]urchase and sale transactions involving assets held within managed accounts, brokerage accounts, and retirement accounts such as 401(k) plans and IRAs, must be disclosed.”<sup>9</sup> Second, Rep. Davidson’s stock trades are not part of a qualified blind trust, excepted trust, or any other exclusion listed in the Committee on Ethics’ guidance for filing PTRs.<sup>10</sup>

### **Rep. Davidson May Have Knowingly Violated the STOCK Act**

It is unclear whether one reason for the late filings was an attempt to avoid scrutiny of trades connected with non-public information or with potential conflicts of interest.

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<sup>5</sup> *Id.*

<sup>6</sup> Rep. Davidson 2020 financial disclosure, *supra* note 1, at 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 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>.

<sup>10</sup> *See Id.*; Rep. Davidson 2020 financial disclosure, *supra* note 1.

Finding Rep. Davidson's failure to timely file his PTR as merely an oversight requires an assumption that he was not familiar with the requirement and had not received any training. Yet, two factors suggest that Rep. Davidson was in fact aware of the requirement and may have knowingly avoided disclosing his stock trades at the time they were made.

*First*, Rep. Davidson was required to attend mandatory ethics training for new members of Congress five years ago, in 2016.<sup>11</sup> This training includes discussion of financial disclosures and the STOCK Act. Members of Congress are required to complete the ethics training within 60 days of their start date,<sup>12</sup> meaning Rep. Davidson would have been required to complete the training on or about August 8, 2016.<sup>13</sup> The Committee on Ethics does not grant extensions for completing ethics training.<sup>14</sup> Accordingly, Rep. Davidson would have known of the need to report such transactions roughly four years earlier. Moreover, Rep. Davidson was not a new member of Congress, and should certainly have been aware of the applicability of STOCK Act requirements to the sale of Workhouse Group stock.

*Second*, Rep. Davidson also should have known about the disclosure requirements at the time of the transaction, as, in March 2020, high profile insider trading allegations engulfed several senators and became widely publicized.<sup>15</sup> These allegations of STOCK Act violations were all based on information disclosed in PTRs. Rep. Davidson's sale of Workhorse Group stock occurred after these events. Further, additional STOCK Act violations came to light later in 2020, when Rep. Donna Shalala failed to file PTRs for numerous transactions.<sup>16</sup> Considering that the requirement for PTRs in Congress was headline news throughout 2020, and that Rep. Davidson had already filed numerous disclosures with the House, it seems unlikely that he was unaware of the disclosure requirements at the time of the transactions.

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

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

<sup>12</sup> *Id.*

<sup>13</sup> Rep. Davidson's first day in office was June 9, 2016.

<sup>14</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, *supra* note 7.

<sup>15</sup> *See e.g.*, Aruna Viswanatha & Dave Michaels, *Justice Department Investigating Lawmakers for Possible Insider Trading*, WALL ST. J (Mar. 31, 2020).

<sup>16</sup> 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>.

## Conclusion

The STOCK Act requires members of Congress to timely file PTRs for any individual stock trades.<sup>17</sup> Based on the available facts, there is probable cause to believe that Rep. Davidson was aware of this requirement, and his failure to timely file the transaction reports violates the STOCK Act.

CLC respectfully requests that OCE open a preliminary review to determine whether Rep. Davidson'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,

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<sup>17</sup> P.L. 112-105, *supra* note 2; *see* U.S. HOUSE COMM. ON ETHICS, Instruction Guide, *supra* note 9, at 41 (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).