



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 Delegate Michael San Nicolas for a possible violation of the STOCK Act and House rules. In 2019 and 2020, Del. San Nicolas made securities transactions worth between \$15,001 and \$52,370 without filing periodic transaction reports (“PTRs”) as was required by the STOCK Act and House rules.<sup>1</sup> An OCE investigation is necessary to determine whether his failure to file was knowing and willful.

The STOCK Act requires prompt reporting when a stock transaction occurs, yet members of Congress are avoiding scrutiny of the nature of their stock trades by not disclosing the trades, claiming that they were 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 late filing of PTRs, many may simply wait until their annual financial disclosures to

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<sup>1</sup> The Honorable Michael San Nicolas, Annual Financial Disclosure Report for Filing Year 2019, Clerk of the House of Representatives (filed Aug. 13, 2020), [https://disclosures-clerk.house.gov/public\\_disc/financial-pdfs/2019/10038549.pdf](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2019/10038549.pdf) (“2019 financial disclosure”); The Honorable Michael San Nicolas, 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/2020/10043463.pdf](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10043463.pdf) (“2020 financial disclosure”).

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 . . . .”<sup>2</sup>

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.”<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

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>

### **Del. San Nicolas Failed to File Periodic Transaction Reports for Transactions in 2019 and 2020.**

Del. San Nicolas’ annual financial disclosures in 2019 and 2020 reveal that he sold Livent stock worth \$2,370 in 2020 and call options in Yamana Gold worth between \$15,001 and \$50,000 in 2019.<sup>6</sup> Yet, Del. San Nicolas did not file timely PTRs within 45 days of these sales, as was required. These sales were made after Del. San Nicolas was elected as the Vice Chair of the House Financial Services Committee.<sup>7</sup>

### **Del. San Nicolas May Have Knowingly Violated the STOCK Act**

Based on publicly available information, it is unclear whether a reason for the late filings was an attempt to avoid scrutiny of trades connected with non-public information or with potential conflicts of interest.

Accepting Del. San Nicolas’ failure to timely file his PTRs as merely an oversight would require an assumption that he was not familiar with the requirement and had not received any training. Two factors suggest that Del. San Nicolas was in fact aware of the requirement and may have knowingly avoided disclosing his stock trades at the time they were made.

*First*, Del. San Nicolas was required to attend mandatory ethics training for new members of Congress in 2019.<sup>8</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

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STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement at 3 (June 11, 2020).

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

<sup>6</sup> Rep. San Nicolas’ 2019 and 2020 financial disclosures, *supra* note 1.

<sup>7</sup> Gaynor D. Daleno, *San Nicolas scores key role in committee that oversees banks*, THE GUAM DAILY POST (May 10, 2019), [https://www.postguam.com/news/local/san-nicolas-scores-key-role-in-committee-that-oversees-banks/article\\_098e57e8-723e-11e9-b0ef-ff4d4eeed765.html](https://www.postguam.com/news/local/san-nicolas-scores-key-role-in-committee-that-oversees-banks/article_098e57e8-723e-11e9-b0ef-ff4d4eeed765.html).

<sup>8</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *Training*, <https://ethics.house.gov/training>.

date,<sup>9</sup> meaning Del. San Nicolas would have been required to complete the training no later than March 4, 2019.<sup>10</sup> The Committee on Ethics does not grant extensions for completing ethics training.<sup>11</sup> Accordingly, Del. San Nicolas would have known of the need to report such transactions upon receiving the training.

*Second*, Del. San Nicolas should certainly have known about the disclosure requirements at the time of the 2020 transaction, as, in March of that year, high profile insider trading allegations engulfed several senators and became widely publicized.<sup>12</sup> These allegations of STOCK Act violations were all based on information disclosed in PTRs. Moreover, later in 2020, STOCK Act violations of Rep. Donna Shalala, who failed to file PTRs for numerous transactions, came to light.<sup>13</sup> Considering that the requirement for PTRs in Congress was headline news throughout 2020, and that Del. San Nicolas had received training on such disclosures in 2019, it seems unlikely that he was unaware of the disclosure requirements at the time of the transactions.

For these reasons, Del. San Nicolas 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 Del. San Nicolas knowingly violated the STOCK Act.

## Conclusion

The STOCK Act requires members of Congress to timely file PTRs for any individual stock trades.<sup>14</sup> Based on the available facts, there is probable

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<sup>9</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, <https://ethics.house.gov/legislation/schedule/faqs-about-training>.

<sup>10</sup> Rep. San Nicolas' first day in office was Jan. 3, 2019.

<sup>11</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, *supra* note 9.

<sup>12</sup> *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](https://www.wsj.com/articles/justice-department-investigating-lawmakers-for-possible-insider-trading-11585586365?mod=article_inline).

<sup>13</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>.

<sup>14</sup> P.L. 112-105, *supra* note 2; *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).

cause to believe that Del. San Nicolas 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 Del. San Nicolas' 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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Kedric L. Payne  
General Counsel and Senior Director,  
Ethics

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Delaney N. Marsco  
Senior Legal Counsel, Ethics

\_\_\_\_\_/s/\_\_\_\_\_  
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Lauri A. Bonacorsi  
Fellow