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THE STOCK ACT

The Failed Effort to Stop Insider Trading in Congress

VOTERS' RIGHT TO KNOW

TAKING STOCK OF THE STOCK ACT

Congress passed the Stop Trading on Congressional Knowledge Act (STOCK Act) in 2012, following more than 10 years of allegations of insider trading by members of Congress and their staffers. A decade after its passage, the STOCK Act has done little to prevent the appearance of corruption and has fallen short of ensuring that Congress is prioritizing the public over their own interests.

The onset of COVID-19 highlighted the shortcomings of the STOCK Act, when dozens of members of Congress from both sides of the aisle made stock transactions totaling over $150 million. Many of the trades happened before the public knew of the danger of the pandemic, which sparked allegations of insider trading against lawmakers who received confidential warnings before COVID-19 reached the U.S.

Instead of public trust increasing, one of the objectives of the STOCK Act, two polls in 2021 found that most Americans support banning lawmakers from trading individual stocks altogether. Voters have made it clear that they do not trust members of Congress to prioritize their interests, and the current trend of perceived corruption and alleged insider trading will continue unless meaningful new legislation is passed.

THE STOCK ACT

Initially introduced in 2006, the STOCK Act was drafted in response to insider trading allegations against members of Congress and congressional staffers. At that time, the bill did not pass.

Fast-forward to 2012, after it was finally revealed that members of Congress allegedly used insider information to line their pockets during the Great Recession. The STOCK Act was re-introduced in the Senate and was overwhelmingly passed by the full Congress in February of that year. President Obama signed the STOCK Act into law on April 4, 2012.

In the decade since it was passed, it has provided greater transparency into the stock trading activities of our elected officials, yet it has also highlighted why transparency alone is not enough to prevent the appearance of corruption – or the actual occurrence of corruption.

The STOCK Act had three principal objectives related to congressional stock trading:

1. Increase public trust in Congress.
2. Increase transparency with new filings required within 30 days of member trades.
3. Penalize members for insider trading by clarifying that the securities laws apply to Congress.

A review of the impact of the STOCK Act reveals the limited success of the law's transparency objective, and no success with increasing public trust and penalizing insider trading.

Despite requiring prompt reporting of suspiciously timed stock trades, the STOCK Act did not accomplish the level of disclosure intended. Instead, a significant number of late or missing filings has defeated the purpose of real-time notice of potentially improper conduct.

The STOCK Act failed to achieve its goal of penalizing members for insider trading, as no member of Congress has ever been prosecuted under the STOCK Act, despite persistent credible allegations.

In addition to the lack of enforcement, the small penalties associated with violations do not incentivize members to comply with the STOCK Act. The penalty for a member of Congress failing to report a financial transaction is $200. Further, even if a lawmaker does receive a fine under the STOCK Act, no public records exist to indicate whether members of Congress who are fined even pay.

HOW TO PROTECT THE INTERESTS OF THE PUBLIC AND STOP INSIDER TRADING IN CONGRESS

It is clear that transparency is not enough, particularly with the persistent trend of noncompliance with reporting requirements. The current trend of perceived corruption and alleged insider trading will continue without meaningful reform.

Fortunately, updating the STOCK Act and changing the current congressional stock trading status quo is popular and has bipartisan support. If lawmakers continue to pursue reform and close possible loopholes, there is hope of increased public confidence in Congress.

Various proposals for STOCK Act reform have emerged from public concern with congressional stock trading controversies. The proposals include five major options for reform:

1. An absolute ban on individual stock ownership.
2. Requiring qualified blind trusts for stock transactions.
3. Permitting ownership of only stocks that were owned prior to holding office.
4. A system of pre-approval for stock transactions.
5. Immediate disclosure of stock trades.

Each of these options has unique benefits and challenges, which are further outlined here. The effectiveness of any of the reform proposals is dependent upon enforcement. Meaningful STOCK Act reform should, at the very least, close five common potential loopholes that could lead to further public distrust. Nevertheless, 10 years of the STOCK Act has established that the status quo is unsustainable.

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