

Testimony of Melanie Sloan  
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Senate Committee on Homeland Security and Governmental Affairs  
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Chairman Lieberman, Ranking Member Collins and other members of the committee, thank you for inviting me here today to join such a distinguished panel. You will be hearing from some of the foremost experts on securities regulation and they are far better equipped than I to discuss whether insider trading laws already on the books apply to members of Congress and congressional staff. Further, others may debate whether and to what extent members of Congress really have unduly high rates of return on investments compared to average investors. I, on the other hand, am here as the executive director of Citizens for Responsibility and Ethics in Washington (CREW), a government watchdog group focused on congressional ethics. Since its founding in 2003, CREW has filed a significant number of complaints against members of Congress for a range of self-dealing and self-interested conduct.

From CREW's perspective, while discussions of the breadth and application of insider trading laws are interesting, the most compelling reason this committee should consider and move legislation to prohibit members and congressional staff from trading based on information received in the course of their employment is the incredibly low regard in which Congress is held.

At no time in history has the public's view of Congress been quite so dismal. While the jobless rate remains a dizzying 9% with nearly 14 million unemployed, and a wide swath of America is suffering severe economic hardship, members of Congress have never been richer. 66% of senators and 41% of House members are millionaires. Many members have significant stock portfolios, but only some maintain their assets in blind trusts. Whether or not it is accurate, there

is a widespread public belief that members of Congress are using their positions to feather their own nests. They come in middle income, and walk out rich.

As Alaska Governor Sarah Palin recently wrote in an op-ed appearing in the *Wall Street Journal*, “the money-making opportunities for politicians are myriad and sickening.” In the past few years, CREW and others have noted with alarm members of Congress who have earmarked projects that increased the value of their personal real estate holdings, pushed through legislation in apparent exchange for campaign contributions, bought into companies that soon thereafter surged in value, urged agencies to take actions that financially benefitted themselves or family members, and made fortuitous stock trades shortly after meetings with federal regulators.

Some argue most members of Congress play by the rules so legislation banning self-dealing is unnecessary. But a July poll found a whopping 46% of Americans believe most members of Congress are corrupt. So at the very least, those few bad apples are ruining the reputations of honest legislators. In any event, we don’t write laws for the majority. After all, not many people rob banks, burn down buildings, or commit murder, but we nevertheless have laws banning such conduct as well as cops on the beat to catch those who do. Specific, clear prohibitions both deter undesirable behavior and allow us to punish violators.

Some also might suggest the House and Senate Ethics Committees already have authority to discipline members and staff who trade on information acquired through dint of their positions. Both the House and Senate ethics manuals incorporate the Code of Government Service, which provides that all government employees, including officers, should “never use information received confidentially in the performance of governmental duties for making private profit.” Nevertheless, the only time a member of Congress appears to have been disciplined based on this

prohibition is in the only somewhat relevant case of Florida Congressman Robert L. F. Sikes. There, the House Ethics Committee found Rep. Sikes had failed to disclose investments in bank stock while engaged in official actions on behalf of the bank. As a result on July 29, 1976, he was reprimanded by the full House in a 381-3 vote.

According to the Senate Ethics Manual, up to the date the manual was published in 2003, the Code of Government Service had not been cited by the Senate Ethics Committee as a basis for recommending discipline of a Senate member, officer or employee. I do not believe the committee has cited the code in any other matter since that time.

Aside from whether the ethics committees have the jurisdiction to discipline this sort of conduct, the question is who would trust them to do so? Certainly not CREW. The fact is the public – and good government groups like mine – have remarkably, and deservedly, little confidence in the congressional ethics committees. A few recent instances aside, it often appears as if the committees are more interested in covering up the misconduct of members than in aggressively enforcing the ethics rules. One example from my own work is that CREW filed an ethics complaint against a senator in 2005, only to receive a letter two years later in 2007 informing us that because the senator had retired, the committee no longer had jurisdiction over him. In another instance, CREW filed a complaint against a senator in the fall of 2008 alleging he had filed inadequate financial disclosure reports, but over three years later we have yet to receive a response.

In the House of Representatives, the situation is even worse. The House Ethics Committee is currently itself the subject of an ethics investigation for misconduct by committee members and

staff in pursuing an investigation of another member for violating House conflict of interest rules.

Therefore, while the House and Senate should amend their codes of conduct to make clear that trading securities based on information obtained through the course of their employment is prohibited and will result in severe disciplinary proceedings -- perhaps including a requirement that the offender pay a fine of three times the amount of profit obtained or loss avoided -- this alone would not be sufficient. Rather, to help instill confidence that Congress takes the misconduct of its own members as seriously as it takes the misconduct of others, it is important to pass legislation specifically making trading on confidential information a crime. Further, given the ever increasing evidence that the Securities and Exchange Commission's enforcement division is overwhelmed and ineffective, it is also imperative the Department of Justice have jurisdiction to prosecute offenders.

This brings me to my one note of caution. The Speech or Debate Clause of the Constitution will have a bearing on the ability of prosecutors to bring charges against members of Congress who trade on information obtained through their positions as legislators. The clause protects members from inquiry into their legislative acts or their motivation for performing legislative acts. A "legislative act," however, does not include all activity in any way related to the legislative process. Rather, it is an act generally done in Congress in relation to the business before it. Hypothetically, imagine after some version of the STOCK Act became law, a senator received documents as a result of a request made pursuant to a committee investigation and then, based on confidential information contained in those documents, bought stock that soon thereafter increased in value. The Speech or Debate Clause would prevent a prosecutor investigating the senator from obtaining or introducing before a grand jury or at trial any of the

records obtained by the committee. That said, courts have held that not everything a member of Congress does is protected by the Clause. Meetings with constituents and business people, assistance in procuring government contracts and contacting agency officials have been considered by courts to be “political matters” not protected. The Supreme Court has been clear that the purpose of the Clause is not “to make members of Congress super-citizens, immune from responsibility.” In any event, the Speech or Debate Clause issue is no reason to avoid legislating. After all, the criminal code includes a statute prohibiting bribery of and by public officials and even though there have been instances where the Clause has prevented prosecution despite strong evidence of wrongdoing, there are other instances where cases have been brought successfully.

Reviewing both versions of the STOCK Act that have been introduced in the Senate, S. 1871 and S. 1903, I think S. 1871 is the better bill. For reasons unclear to me, while much of the language of the two bills is nearly identical, S. 1903 includes several additional sections perhaps intended to strengthen the intent requirement, but which in my view, undermine the bill’s purpose.

Further, while I strongly support requiring disclosure of the purchase and sale of securities, I believe such reports should be made much more quickly than the 90 days provided in both bills.

Finally, I would also suggest two additional provisions. First, the personal financial disclosure report forms should be revised. Currently, these forms allow members to provide fairly vague valuations of their unearned assets: at the high end from \$1,000,0001-\$5,000,000, \$5,000,0001-\$25,000,000, \$25,000,0001-\$50,000,000; and to list similarly vague valuations of the income received from those assets. I’d recommend narrowing those ranges to allow readers to more accurately assess members’ holdings.

Finally, while some members of Congress maintain their assets in blind trusts, there is some question as to exactly how blind those trusts really are. Do members know what securities are held in the trusts? Are they informed of purchases and sales? I'd recommend members with blind trusts be required to submit statements from their financial managers certifying that they are not providing such information to the member or the members' close family members.

The bottom line is the public is growing increasingly frustrated with a Congress viewed as part of the 1% and as more concerned with preserving that status than in working to improve the plight of all Americans. Legislation clearly prohibiting members and congressional staff from buying and selling securities based on material non-public information should cause no concern among rule-abiding members of Congress and staff, but likely will deter such conduct and ensure consequences for those who do engage in such self-dealing practices. While passing a STOCK Act is not a cure-all, it would be a good first step as part of a sustained effort to demonstrate Congress hears and understands our concerns, and is here to serve the public interest and not your own personal financial interests.