Negative: Congressional Blind Trust – not needed

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Summary: AFF is worried about members of Congress trading in the stock market based on information they have or power they have as members of Congress, reaping unjust gains. Plan would pass HR 3549, which requires all members of Congress to put their assets into “blind trust,” that is, their assets are managed by an independent trustee and the investments are kept secret. Since Congressmen wouldn’t know where their money is invested, they wouldn’t be able to enrich themselves with market trading.

Negative: Congressional Blind Trust 3

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Insider trading prohibitions falsely make investors think there’s a level playing field. They’d be better off being more careful 9

Negative: Congressional Blind Trust

TOPICALITY

1. No substantial policy reform

Link: Congressional insider trading is already illegal

Mark Strand and Tim Lang 2018. (*Mark Strand is the President of the Congressional Institute and Timothy Lang is a research director*) “Can Members of Congress Engage in Insider Trading?” 8 Aug 2018 CONGRESSIONAL INSTITUTE <https://www.congressionalinstitute.org/2018/08/16/can-members-of-congress-engage-in-insider-trading/>

Members of Congress come across a lot of information in the course of their official duties. Can they use “insider information” to make a quick buck by buying and selling stock at opportune times? The answer to this question is a resounding and unequivocal no. Statutory law forbids it, and even if it did, Congress has always had the constitutional power to discipline its Members.

Link: AFF wants it to be even more illegal than it already is

…and to create some additional fines and methods to go after it.

Violation: “More of the same” isn’t substantial reform

Surely the framers of the resolution didn’t intend for Affirmatives to propose doing a little more of the Status Quo and call it “substantial reform.” No reasonable person would define “substantial reform” that way.

Impact: No Affirmative team

No one showed up in the room today to affirm substantial reform, so there’s no Affirmative team. No matter who wins, you should write “Negative” on the ballot.

INHERENCY

1. The STOCK Act

“Stop Trading on Congressional Knowledge Act” (STOCK Act) already bans insider trading and requires trade disclosure

Tamara Keith 2013 (journalist with NPR) 16 Apr 2013 “How Congress Quietly Overhauled Its Insider-Trading Law” <https://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-trading-law>

Still, two major elements of the law remain. Insider trading is illegal, even for members of Congress and the executive branch. And for those who are covered by the now-narrower law, disclosures of large stock trades are required within 45 days. It will just be harder to get to them.

A/T “STOCK Act was weakened” – It still dramatically reduces Congressional trading

Dr. Craig Holman 2017 (PhD; government affairs lobbyist at Public Citizen) 22 June 2017 The Impact of the STOCK Act on Stock Trading Activity by U.S. Senators, 2009 – 2015 <https://www.citizen.org/wp-content/uploads/migration/case_documents/2017_stock_act_report.pdf>

The STOCK Act has also clearly had an impact on the number of stock transactions by the senate as a whole. The number of transactions has decreased by 50 percent from 2012 to 2015 and 68 percent from 2009 to 2015. Despite Congress under-cutting much of the law’s disclosure regime, the STOCK Act continues to be a significant force in reducing the overall number of stock transactions by the Senate.

2. Prosecutions are happening

Rep. Chris Collins was prosecuted in 2018 for insider trading

NEW YORK POST 2018 (journalist John Crudele) 8 Aug 2018 “Insider trading used to run wild among politicians” <https://nypost.com/2018/08/08/insider-trading-used-to-run-wild-among-politicians/> (brackets added)

[New York Representative Chris] Collins was indicted by federal prosecutors Wednesday on fraud charges in connection with an alleged insider-trading scheme involving investments he made in an Australian biotech firm. In this case, prosecutors say that Collins in 2017 passed information on Innate Immunotherapeutics drugs to his son and another co-conspirator. The three avoided $768,000 in losses when a drug test didn’t live up to expectations and the company’s stock plummeted. Everything Collins did, according to a good-government group, would have been OK until 2012, when President Barack Obama signed the Stop Trading on Congressional Knowledge (STOCK) Act.

3. Public disclosure

The public can see all the trades done by members of Congress (under the STOCK Act) and they can see anything suspicious

Mark Strand and Tim Lang 2018. (*Mark Strand is the President of the Congressional Institute and Timothy Lang is a research director*) “Can Members of Congress Engage in Insider Trading?” 8 Aug 2018 CONGRESSIONAL INSTITUTE <https://www.congressionalinstitute.org/2018/08/16/can-members-of-congress-engage-in-insider-trading/>

(Members are required to publicly report on their annual financial disclosure forms all stocks that are owned, purchased or sold. Such transactions should be reported within 30 days and “in no case later than 45 days” afterwards (§6(a)). The Act also required that the reports be posted on the House and Senate websites (§8(a)) This allows the public and the media to check whether a Member has been engaged in any suspicious activity in the securities markets.)

Disclosure solves because voters can punish bad Congressmen if they see suspicious activity

Mark Strand and Tim Lang 2018. (*Mark Strand is the President of the Congressional Institute and Timothy Lang is a research director*) “Can Members of Congress Engage in Insider Trading?” 8 Aug 2018 CONGRESSIONAL INSTITUTE <https://www.congressionalinstitute.org/2018/08/16/can-members-of-congress-engage-in-insider-trading/>

Aside from the discipline that Congress or the criminal justice system might pursue, there is always the court of public opinion. Members of Congress are always responsible to their constituents, who always have the right to turn an incumbent out of office at the next election, for whatever reason. Beyond having a right to defeat an unworthy incumbent, it is not even too much of a stretch to say that the people must do so.

Disclosure is how Rep. Collins was caught and prosecuted

NEW YORK POST 2018 (journalist John Crudele) 8 Aug 2018 “Insider trading used to run wild among politicians” <https://nypost.com/2018/08/08/insider-trading-used-to-run-wild-among-politicians/> (brackets added)

Collins was undone by sleuthing by the good-government group known as Public Citizen, which was tracking the stock-buying of many members of Congress. In a letter to regulators on Jan. 5, 2017, Public Citizen wrote, “we request an investigation into the stock market trading activities of Reps. Tom Price (R.Ga.) and Chris Collins (R. N.Y.) for possible violations of insider trading and conflicts of interest laws and regulations.” The action against Collins and the others was brought by the Justice Department, not the Securities and Exchange Commission.

4. Congressional sanctions

Congressmen face more sanctions than private citizens for insider trading. They can be fined or expelled from Congress, and then face criminal prosecution!

Mark Strand and Tim Lang 2018. (*Mark Strand is the President of the Congressional Institute and Timothy Lang is a research director*) “Can Members of Congress Engage in Insider Trading?” 8 Aug 2018 CONGRESSIONAL INSTITUTE <https://www.congressionalinstitute.org/2018/08/16/can-members-of-congress-engage-in-insider-trading/>

In addition to statutory law against insider trading, each Chamber has a constitutional right to discipline its own Members, officers, and staff. Both the House and Senate ethics rules provide ample room to punish insider trading—and, arguably, did so even before the passage of the STOCK Act. Both the 2008 edition of the [House Ethics Manual](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf) and the 2003 edition of the [Senate Ethics Manual](https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=F2EB14E3-1123-48EB-9334-8C4717102A6E) note that individuals under their respective Chambers’ jurisdictions may be disciplined for violations of the Code of Ethics for Government Service. This code admonishes [public servants](https://www.law.cornell.edu/cfr/text/34/appendix-to_part_73), “Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.” Aside from specific references to the Code of Ethics for Government Service, each Chamber has broad rules requiring Members and staff to act at all times in ways that do not dishonor their Chamber, and each of the ethics manuals contain a discussion on the various ways the House and Senate can discipline for behavior that is not otherwise explicitly forbidden. The House and Senate could impose different kinds of penalties, including fines and, for Members, expulsion from office if 2/3 of the Chamber votes to do so. Any discipline imposed by one of the houses of Congress would be separate from prosecution by the Justice Department. Sanction by a Member’s chamber is an additional form of punishment that a private citizen would not face.

MINOR REPAIR - STOCK Act has solved most of the problem - Just minor repair it to solve the rest.

3 Minor repairs to the STOCK Act would solve: 1) No trading in industries they oversee. 2) Improve congressional disclosure. 3) Disclose trades by lobbyists

Dr. Craig Holman 2017 (PhD; government affairs lobbyist at Public Citizen) 22 June 2017 The Impact of the STOCK Act on Stock Trading Activity by U.S. Senators, 2009 – 2015 <https://www.citizen.org/wp-content/uploads/migration/case_documents/2017_stock_act_report.pdf>

Measured in terms of the value and number of stock transactions by U.S. Senators, the STOCK Act has had a significant and meaningful impact on reining in the stock market activities of Congress and reducing the opportunities for congressional insider trading. By making it clear that the laws against insider trading apply to Congress, and providing some disclosure of congressional stock trading activity, the STOCK Act clearly has dampened the appetite of many members of Congress for playing in the stock market. That is a good thing. But many problems still persist that need be addressed. First of all, while the Senate as a whole has shied away from stock trading activity, several individual members of Congress continue to be prolific players and, more troubling, prolific players in stocks that pose an apparent conflict of interest with their official duties. Sen. Bob Corker (R-Tenn.) has recently traded hundreds of thousands worth of stock in energy infrastructure businesses while sitting on the Senate Banking, Housing and Urban Affairs Committee. Sen. Thad Cochran (R-Miss.) is also a busy player in energy stocks while sitting on the Senate Appropriations Subcommittee on Energy and Water Development. Sens. Sheldon Whitehouse (D-R.I.) and Pat Toomey (R-Pa.) actively trade in health care stocks while serving on healthcare subcommittees. Sen. Tom Udall (D-N.M.) trades in natural resources and precious metals stock while on subcommittees that oversee these industries. A separate study by Politico found a similarly disturbing trend. Although only three in 10 members of the House and Senate combined were active in the stock market over the last two years, a small group of very wealthy lawmakers accounted for two-thirds of those trades. Furthermore, many of these lawmakers trade stocks in businesses that they directly oversee from their perches in Congress. In some cases, the lawmakers even own significant stakes in the companies that are affected by their legislative work. Rep. Hal Rogers (R-KY), for example, traded dozens of stocks while serving as Chairman of the House Appropriations Committee. Rogers also maintained partial ownership of a bank from which he collected at least $100,000 in dividends on the stock market. Rogers is on the front lines of deciding whether to roll back the Dodd-Frank regulations on banks, including his own bank. Such appearances of conflicts of interest could be vastly reduced if members of Congress, like senior executive branch employees, would be required to avoid trading in businesses that they directly oversee in their official capacity. Secondly, the disclosure regime for stock trading activity by Congress needs to be re-established. The current limited disclosures have had a positive impact, but the disclosure system should (i) encompass senior congressional staff, many of whom are also active traders and with potential access to inside information; and (ii) be searchable, sortable and downloadable to make monitoring of congressional stock trading activity more robust and in real-time. Finally, it is imperative to pull back the covers that cloak the “political intelligence” industry – the secretive Wall Street operatives and lobbyists who roam the halls of Congress in search of valuable information to sell on the stock market. Reps. Slaughter and John Duncan. Jr. (R-Tenn.) have reintroduced bipartisan legislation to do precisely that, known as the “Political Intelligence Transparency Act.” The Political Intelligence Transparency Act is straightforward disclosure legislation that would not prohibit or restrict political intelligence activities; instead, the measure would require full disclosure so that these activities can be monitored for compliance to the insider trading laws.

HARMS / SIGNIFICANCE

1. Few members involved

Most trades are done by 12 members and one of them did over 1/3 of all trades done by the entire Congress

Maggie Severns 2017 (journalist) 14 May 2017 “Reckless stock trading leaves Congress rife with conflicts” POLITICO <https://www.politico.com/story/2017/05/14/congress-stock-trading-conflict-of-interest-rules-238033>

- Three in 10 members of Congress made a stock trade over the past two years  
- All told, they made over 21,300 trades or two thirds of those trades  
- The top 12 traders are responsible for two thirds of those trades   
- Approximately 7,300 trades are attributable to a single congressman, Mike McCaul of Texas

2. Insider knowledge doesn’t always result in profit

Insider information doesn’t guarantee a profit

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

Insider information doesn't guarantee outcomes. There are many instances where even if you had perfect information, you wouldn't know how the market would react to that information. A merger announcement may make a stock go up, but sometimes it bafflingly moves in the other direction. Even a positive sales announcement may not move a stock if that expectation was already priced in or forward guidance is week. Trading on insider information gives you some information, but without another critical piece- how will other market participants react.

3. Victimless crime

No one is harmed by insider trading, so it shouldn’t even be a crime

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

A crime with no victims. The crux of most insider-trading-as-a-crime arguments is that insider trading creates an uneven playing field and the laws protect the average investor. I disagree. How do you have a crime when there is no victim? Your decision to make a trade in the market isn't predicated upon who is on the other side of the trade as either a buyer or a seller. Just because one side profits (or avoids losses) that does not have a direct impact on the counter-party. Why prosecute a crime when the other side doesn't get hurt?

4. No clear definition / ridiculous distinctions

Distinctions between public and non-public information are silly and useless

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

For example, if I sent a team to the mall to count traffic and interview customers outside of a store and noticed from that research that sales were up from previous months, that's technically non-public information. But that information is derived from research and trading on that research is legal. However, if I had dinner with the CEO of that same retailer and he told me that sales were up from month-to-month before he put out a press release, that would still be non-public information but it would be illegal to trade on it. It's the same information, so should the methodology of retrieving it make a difference? No, the market doesn't care how the information was obtained, it only cares that sales are up.

5. Insider trading is net beneficial, not a harm

Information is always a good thing in the stock market, no matter how it gets there. Blocking it creates a net loss

John Stossel 2012 (former host of Fox Business’ *Stossel* and ABC’s *20/20*) “Legalize Insider Trading” 28 Nov 2012 <https://reason.com/2012/11/28/legalize-insider-trading/> (ellipses in original)

Think about the role of prices in a market economy. They aren't arbitrary numbers. They are bearers of information that guide people in buying and selling. Prices are never perfect, but whenever government regulation stifles this information function, it leads market participants astray. In an actual [free market](https://reason.com/tags/free-market), a company's stock prices embody traders' expectations about its future. Information confirms or upsets expectations, and that is reflected in prices. The sooner relevant information gets built into the stock price, the better for everyone. As economist Warren C. Gibson writes: "When the dissemination of significant news about a company is blocked by insider-trading restrictions, that company's shares are mispriced relative to where the price would be if the news were out. If the news is bad, investors will buy at prices they would not have paid had they heard the news. Movement of capital toward more productive uses is inhibited. If it is good, some sellers will let go of their shares at prices they would not have accepted. … In either case, there is a net loss to the economy."

DISADVANTAGES

1. Reduced market efficiency

Link: Insider trading promotes getting information to market as quickly as possible, benefitting all market participants

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

Information efficiency benefits the average investor. Doing away with insider trading as a crime benefits all market participants. Information is the driver of market efficiency. While a perfectly efficient market will never be achieved, getting information to the market as quickly as possible helps to alleviate asymmetry and allow that information to reach a maximum of participants as quickly as possible. By encouraging people to seek out non-public information and bring that to market more quickly, you even out volatility, lessen the exposure to bad information and increase the exposure to good information, each of which benefits all market participants.

Impact: Turn AFF harms

AFF’s goal was more efficient markets, so vote NEG if that’s what you want.

Impact: More insider trading would actually reduce the profits to the “big guys” who are profiting from it

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

Profits to be made from information acts as an incentive, which helps expedite that flow of information. However, if insider trading were legal, you would have more participants seeking out that information, so not only would it get to market faster, it will lessen the reward and profits of those trading on it. That's a fancy way to say the big guys would actually make less money if you got rid of insider trading.

Impact: Net benefits favor insider trading. We should stop wasting resources trying to stop it and focus on legalizing it

Carol Roth 2014 (former investment banker) 17 June 2014 “It's time to legalize insider trading” <https://www.cnbc.com/2014/06/17/its-time-to-legalize-insider-tradingwall-streetcommentary.html>

The bottom line is that, despite the spin of the headlines, trading on non-public information has no victims and frankly creates the best outcomes for all participants by smoothing volatility and creating more accurate pricing. Instead of wasting time and resources on prosecuting it, we should be devoting time and resources to legalizing it.

2. False sense of security

Insider trading prohibitions falsely make investors think there’s a level playing field. They’d be better off being more careful

John Stossel 2012 (former host of Fox Business’ *Stossel* and ABC’s *20/20*) “Legalize Insider Trading” 28 Nov 2012 <https://reason.com/2012/11/28/legalize-insider-trading/>

Also, these laws, like all regulation, create a false sense of security. They lead people to think stock traders play on the same level field. Far better to encourage investors to be wary—not complacent—when they buy stocks. For every buyer, there's a seller. What does the other party know that you may not know?