BUY LAW, SELL HIGH: THE CONSTITUTIONALITY OF CONGRESSIONAL STOCK TRADING REGULATION

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ABSTRACT

A new era in American politics is brewing. With the advent and rapid development of the internet, including social media, a grassroots movement to push for government accountability has gained increasing traction. Constituents across the political spectrum are concerned that their elected officials are overstepping their constitutional authority, particularly the practice of congressional stock trading through obtaining insider information. Despite the passage of the STOCK Act in 2012, which aimed to prevent federal insider trading with transparency, the problem persists. In 2024, members of Congress reported a total of $706.37 million in stock trading, with an average return rate of 28%. Senator Thomas Tuberville of Alabama, for instance, realized a return of 179% on a $250,000 investment. Recently proposed legislation, such as the HONEST Act and the ETHICS Act, has shown little progress, yet frustration continues to rise. The objective of this paper is to assess the constitutionality of a congressional individual stock trading ban or restriction, underpinned by historical attitudes regarding collusion between elected officials and private enterprise. Further, this paper weighs constitutional arguments for and against a congressional individual stock trading ban, accounting for Court precedents and current legal framework. This paper seeks to provide a well-balanced view and a pragmatic policy proposal to chart a new future of accountability within the government.

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I. Background

While the Founding Fathers could not have predicted the robust stock trading infrastructure in today's America, discussions about government officials meddling with private enterprise were common throughout the country's infancy. As early as 1789, Congress barred U.S. Treasury officials from trading government bonds; however, this restriction did not extend to legislators.[1] Though executive and judicial officials are traditionally bound by conflict-of-interest regulations, legislators still maintain relative freedom to trade assets, even if they may benefit from insider knowledge.[2]

Part of President Franklin D. Roosevelt's New Deal program was the Securities Exchange Act of 1934, which established increased federal oversight of trading and securities, giving the new Securities and Exchange Commission (SEC) the enforcement authority over securities markets.[3] Despite the Act providing some safeguards against insider trading, the law made no explicit mention of members of Congress. It was not until 1978 that Congress passed the Ethics in Government Act, which mandated federal officials to provide yearly asset disclosures, but once again made no mention of requiring divestment from conflicting holdings to avoid potential insider trading advantages, a standard required of executive officials.[4]

As America progressed into the twenty-first century, public scrutiny of insider trading sharply increased. Notably, around the 2008 financial crisis ("The Great Recession"), several members of Congress allegedly traded after confidential economic

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[1] Kimberly Kindy, *Congressional Rules on Trading Had Their Start in 1789*, Wash. Post (June 23, 2012).
[2] Kimberly Kindy, *Members of Congress: Is it Time to Ban Congressional Stock Trading?*, CIW Reports (Cornell Univ. blog) (June 23, 2025).
[3] Maya Kornberg, *Congressional Stock Trading, Explained*, Brennan Center for Justice (Sept. 4 2025).
[4] Ethics in Government Act of 1978, S. 555, 95th Cong. (as passed by Senate, May 3, 1978).

briefings.[5] Later, in 2011, public scrutiny spiked when television news magazine *60 Minutes* published an investigation that revealed various suspicious trades by Congressmembers, igniting a bipartisan effort for reform.[6] These pressures culminated in the Stop Trading on Congressional Knowledge (STOCK) Act of 2012. Introduced by Representative Brian Baird (D-WA) and signed into law by President Barack Obama, the STOCK Act sought to ban insider trading using nonpublic information by members of Congress. The Act's main provision, arguably, was requiring members of Congress to publicly report stock trades over $1,000 within about a month of initial purchase.[7] At the time, the STOCK Act was praised as a landmark in government accountability policy, yet its cracks quickly began to show. For instance, violations were weakly punished at best, and penalties of only $200 became common. In fact, *Business Insider* found that over 75 legislators violated the STOCK Act's reporting mandate between 2020 and 2023.[8]

Most recently, renewed public outrage was ignited by the 2020 COVID-19 trading scandal, in which Senators Kelly Loeffler (R-GA), Richard Burr (R-NC), and others were accused of selling stocks after confidential pandemic briefings. Although the Department of Justice led an investigation into these Congressmembers, no charges were filed.[9] Currently, bipartisan proposals seek a total ban on congressional stock trading. In an April 2025 poll, *Data for Progress* found that roughly 60% of Americans support "banning members of Congress from trading individual stocks."[10] Though there is immense public support, a fully-fledged bill has yet to be passed, let alone signed into

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[5] The Editors of ProCon, *Insider Trading by Congress*, Encyclopaedia Britannica (Oct. 1, 2025).
[6] Steve Kroft, *Congress: Trading Stock on Inside Information?*, CBS News (June 11, 2012).
[7] Campaign Legal Center, *Congressional Stock Trading and the STOCK Act* (Sept. 5, 2025).
[8] Dave Levinthal & Madison Hall, *78 Members of Congress Caught Violating Law on Stock Trades*, Business Insider (Sept. 20, 2021).
[9] Jacob Winton, *Congressional Insider Trading: How the COVID-19 Pandemic Shed New Light on a Decades-Old Form of Corruption*, Wake Forest L. Rev. Current Issues Blog (Apr. 21, 2022).
[10] Abby Springs, *Polling on Congressional Stock Trading*, Data for Progress (Apr. 21, 2025).

law. Many question the plausibility of such a law passing. Would members of Congress ever collectively agree to limit their power? Even if such a bill became law, would it hold up under constitutional scrutiny?

II. Thesis

Amidst the rise of widespread public outrage, a historical analysis demonstrates that the judiciary does not possess the unilateral ability to prohibit or even regulate individual congressional stock trading. However, Congress should pass sweeping legislation, amending the STOCK Act to include faster disclosure windows and effective proportional penalties. Because of pragmatic considerations, including the legislature's hyper-partisan divide and an unsupportive executive, this paper does not advocate for a total ban on congressional individual stock trading. Nevertheless, such legislation–no matter its magnitude of strength–would withstand constitutional scrutiny as it provides a compelling state interest in mitigating corruption and promoting institutional trust from the public, protecting the vision of our nation's Founders.

III. History of Congressional Stock Trading and Legislative Efforts

Remarkably, congressional insider trading has roots dating back to America's founding. In 1778–a mere two years after the signing of the Declaration of Independence–Samuel Chase, a Maryland delegate to the Continental Congress, was accused of using his power for personal gain. Chase, upon learning of Congress's plans to purchase large quantities of flour to supply the Continental Army and the French fleet, shared this confidential information with his business associates.[11] Given this

[11] Michael A. Perino, A Scandalous Perversion of Trust: Modern Lessons from the Early History of Congressional Insider Trading, 67 Rutgers U. L. Rev. 689 (2015).

information, Chase's business associates attempted to manipulate the flour market, selling the government inflated prices. Writing under the pseudonym "Publius," Alexander Hamilton condemned Chase's actions, branding him as "a traitor of the worst and most dangerous kind."[12] While the Framers were not explicitly against congressional stock trading, a clear theme persists. Even before the curation of the U.S. Constitution, our nation's founders were vehemently against abusing official power for personal gain. About a decade later, in 1789, a similar scandal emerged–several members of the Continental Congress had purchased discounted government bonds after being informed that the government planned to redeem them at full face value.[13]

From then on, insider trading operated in a legally gray area. Congress failed to pass any explicit law that prevented its members from trading using nonpublic information. When speaking on the subject, many legislators claimed insider trading regulations simply did not apply to them. Subsequently, this vagueness persisted for over two centuries as congressional trading rarely made the front page of media scrutiny. This, however, drastically changed with the rise of the internet and social media, granting Americans an unprecedented toolbox for research and information sharing.

In 2004, an academic study analyzed stock transactions between 1993-1998 and found that a portfolio emulating U.S. Senate stock purchases beat the market by 85 basis points per month, which approximates to 12% annually.[14] What initially appeared to be an abstract market distortion in the early 2000s hardened into a serious ethical and economic concern by 2008. During the 2008 financial crisis, Treasury Secretary Henry Paulson and

[12] Publius, Letter I (Oct. 16, 1778), in 12 The Papers of Alexander Hamilton 3 (Harold C. Syrett ed., 1967).
[13] Kimberly Kindy, *Congressional Rules on Trading Had Their Start in 1789*, Wash. Post (June 23, 2012).
[14] Alan J. Ziobrowski, Ping Cheng, James W. Boyd & Brigitte J. Ziobrowski, Abnormal Returns from the Common Stock Investments of the U.S. Senate, 39 J. Fin. & Quantitative Analysis 661 (2004).

Federal Reserve Chairman Ben Bernanke provided congressional leaders with confidential briefings regarding the bleak state of the economy, signaling a market collapse.[15] Just a day later, Representative Spencer Bachus (R-AL), ranking member of the House Financial Services Committee, purchased options favoring a market failure.[16] Alan Ziobrowski, one of the authors of the 2004 study, testified before the House Financial Services Committee in July 2009, asserting: "after statistical analysis, we can state with a 95% confidence level that some members of Congress are trading with a substantial informational advantage."[17]

As mentioned earlier, the 2011 *60 Minutes* exposé ignited immediate political action. Within five days of the initial broadcast, the STOCK Act gained 64 additional co-sponsors in the House.[18] By late November 2011, the bill totaled 131 co-sponsors. In his January 2012 State of the Union Address, President Barack Obama decisively stated: "Send me a bill that bans insider trading by members of Congress, and I will sign it tomorrow."[19] Consequently, the Senate passed the Act with a 96-3 vote the following February, along with a House vote of 417-2.

The STOCK Act clearly states that members of Congress, congressional staff, and executive branch employees apply under insider trading prohibitions under federal securities law, specifically Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.[20] The Act mandated officials to be fully transparent to Congress, the U.S.

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[15] Kimberly Kindy, *60 Minutes' Blows the Lid Off Congressional Insider Trading*, Business Insider (Nov. 14, 2011).

[16] Danielle Caputo, Delaney Marsco & Kedric Payne, The STOCK Act: The Failed Effort to Stop Insider Trading in Congress (Campaign Legal Ctr., Feb. 18, 2022).

[17] Alan J. Ziobrowski, Ph.D., Statement of Proposed Testimony Before the H. Subcomm. on Oversight & Investigations, Hearing on Preventing Unfair Trading by Government Officials (July 13, 2009).

[18] The Editors of ProCon, *Insider Trading by Congress: Should Insider Trading by Congress Be Allowed?*, Britannica (ProCon) (Apr. 18, 2012).

[19] U.S. President Barack Obama, State of the Union Address (Jan. 24, 2012).

[20] Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2018); 17 C.F.R. § 240.10b-5 (2025).

government, and most importantly, American citizens with regard to nonpublic information gained from their positions. The main provision of the Act, previously discussed, mandated members and senior government staff to report stock transactions through Periodic Transaction Reports (PTRs) exceeding $1,000 within 30 to 45 days.[21] Additionally, the Act required electronic filing and online availability of financial disclosure reports through sortable databases.[22] Members and their senior staff were also barred from participating in Initial Public Offerings (IPOs) not generally available to the public. Lastly, the Act required members to disclose job negotiations upon leaving government and to report the terms of personal mortgages.[23] While the provisions of the Act may seem solid in nature, several weaknesses quickly surfaced. Because of minimal penalties and weak enforcement, many members of Congress who regularly traded viewed the Act as a hiccup rather than a roadblock. Notably, prosecuting insider trading still presented a high legal bar, as proving a politician traded on confidential, nonpublic information was extremely difficult. Legislators quickly claimed their trading decisions were based solely on public information. For instance, in 2023, the SEC abruptly ended an investigation into Senator Richard Burr (R-NC) regarding his trading activity before the declaration of the COVID-19 pandemic.[24] Following COVID-19 briefings, Senator Burr sold more than $1.6 million in stocks. Burr claimed his decisions were made only on public information, and subsequently, he was not charged as the prosecution's case was deemed too vague.

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[21] Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Pub. L. No. 112-105, 126 Stat. 291 (2012).
[22] Id.
[23] Id.
[24] Kate Kelly, *SEC Inquiry Into Former Senator's Stock Sales Is Closed Without Charges*, N.Y. Times (Jan. 6, 2023).

Though the original STOCK Act was argued to be too weak, Congress appeared to believe the Act wasn't weak enough. In 2013, Congress discreetly passed several amendments that rolled back the Act's transparency provisions, eliminating online database requirements for congressional staff and erasing disclosure requirements for "political intelligence" operatives "who roam the halls of Congress for information related to the stock market."[25] Needless to say, the STOCK Act was a modest attempt at enforcing government accountability that the Founding Fathers called for. It helped lay the foundation that would eventually culminate in the movement we see today. Yet, the rollback of the STOCK Act reflected a deeper erosion in trust of the political elite and institutional accountability. That same distrust would soon manifest electorally, reshaping how voters evaluated power, instinctively pivoting toward populist rhetoric.

The 2024 presidential election marked a turning point in voter behavior. Based on voter turnout data, Americans have become increasingly united by economic class as opposed to ethnic or geographic demographics. The Hispanic vote had become more evenly split, as Donald Trump drew nearly even with Kamala Harris in 2024, losing by only 3 points compared to Joe Biden's 25-point margin in 2020.[26] Similarly, Trump nearly doubled his share of Black voters, from 8% in 2020 to 15% in 2024.[27] Among naturalized citizens, Trump improved his share across white, Hispanic, and Asian groups as well.[28] This shift isn't exclusive to Trump's brand of populism. The recent rise to prominence of figures like Zohran Mamdani, riding on a socialist platform, suggests that

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[25] Craig Holman, *The Impact of the STOCK Act on Stock Trading Activity by U.S. Senators, 2009–2015: A Significant Improvement, but the Ethics Law Needs to Be Strengthened*, (Public Citizen 2015).
[26] Hannah Hartig, Scott Keeter, Andrew Daniller & Ted Van Green, *Voting Patterns in the 2024 Election* (June 26, 2025), Pew Research Center.
[27] Id.
[28] Id.

many voters perceive economic class struggle as a primary concern.[29] In particular, Generation Z has taken an interest in government transparency. Nico Agosta, a political content creator on TikTok under the username @stocking_the_capitol, proclaims himself "your personal campaign finance detective," amassing millions of views and hundreds of thousands of followers.[30] Agosta's most popular videos break down campaign finance summaries of members of Congress, opening with the provocative phrase: "Is your member of Congress a piece of s–t?"[31] Agosta's influence is representative of today's unprecedented call for government transparency. As such, several bills have been introduced to address these concerns. A common consensus is that an outright ban on individual stock trading is the only practical means to prevent insider trading. Senators Gary Peters (D-MI), Josh Hawley (R-MO), Jeff Merkley (D-OR), and Jon Ossoff (D-GA) introduced the Halting Ownership and Non-Ethical Stock Transactions Act (HONEST Act) in July 2025, which had advanced out of committee in the same month.[32]

The HONEST Act would:

- Ban members of Congress, the President, and the Vice President from purchasing covered assets such as securities, commodities, futures, options, trusts, and comparable holdings.
- Ban selling covered assets beginning 90 days after enactment.
- Require full divestiture of covered assets by elected officials, their spouses, and dependents beginning at the start of their next term in office.
- Increase STOCK Act penalties for disclosure violations from $200 to $500.

[29] Eric Lach, *What Zohran Mamdani Knows About Power*, New Yorker, Oct. 9, 2025.
[30] @stocking_the_capitol (TikTok profile), TikTok (last visited Nov. 2, 2025).
[31] Video posted by Stocking the Capitol (@stocking_the_capitol), TikTok, TikTok video (Feb. 2, 2025), https://www.tiktok.com/@stocking_the_capitol/video/7466889944435346731
[32] U.S. Senator Gary Peters, Committee Advances Peters Bipartisan Legislation to Ban Member Stock Trading.

- Apply to spouses and dependent children of covered officials.

The HONEST Act was largely based on the Ending Trading and Holdings in Congressional Stocks Act (ETHICS Act), which aimed to close loopholes found in the STOCK Act. Though the HONEST Act presents a stronger legal framework, the status of the Act's passage remains uncertain, especially during the Trump Administration. The bill has yet to be brought to a full Senate floor vote, as Senate leadership has not yet indicated plans to schedule a floor debate. While the bill is bipartisan in nature, several partisan objections have emerged. Senator Bernie Moreno (R-OH), for example, referred to the bill as a "publicity show."[33] Even if the bill were to pass both chambers of Congress, it is doubtful that President Trump would sign it into law. In a Truth Social post, President Trump expressed his anger at Senator Hawley writing: "I wonder why Hawley would pass a Bill that Nancy Pelosi is in absolute love with — He is playing right into the dirty hands of the Democrats. It's a great Bill for her, and her "husband," but so bad for our Country! I don't think real Republicans want to see their President, who has had unprecedented success, TARGETED, because of the "whims" of a second-tier Senator named Josh Hawley!"[34] President Trump's disapproval of the bill is plausibly due to his personal interest. Though the provisions applying to the President would only take effect after his term, Trump may see any limit to executive power, especially if supported by an opposing party, as overreach. At the forefront of the Trump family's expansion into cryptocurrency, Eric Trump's investments may present a conflict

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[33] Hailey Fuchs, Congressional Stock Trading Ban Gets Senate Panel's OK, Politico (July 30, 2025).
[34] Donald J. Trump (@realDonaldTrump), Truth Social (Jul. 30, 2025, 4:29 PM EST).

of interest, pushing President Trump further away from signing any bill akin to the HONEST Act into law.[35]

Of course, discussions about elected officials abusing their power date all the way back to America's founding. Prominent American thinkers, such as Alexander Hamilton, explicitly label these abuses as un-American in nature. While technology has rapidly developed since then and the way we think of investment has drastically changed, the principle remains timeless. More than ever, due in part to the rise of mass communication via the internet, Americans are justifiably concerned about their members of Congress using insider knowledge for personal gain. Yet, the likelihood of such a law being implemented remains uncertain. Therefore, a more practical approach, essential reforms rather than a total ban, is to be preferred. Nonetheless, perhaps the more important question may not be the status of the bill, but rather its constitutionality–would a law regulating individual congressional stock trading be upheld by the Court?

IV. Constitutionality of a Ban

i. A Ban as Unconstitutional

The primary obstacle to a statutory ban on congressional stock trading is the broad institutional autonomy granted to Congress by Article I of the Constitution. Specifically, Article I, Section 5, Clause 2 vests within each chamber of Congress the ability to govern the conduct of its individual members as it sees fit; this oversight ranges from the processes by which committees are established to the punishment of members for misconduct: "Each House may determine the Rules of its Proceedings, punish its

[35] Vicky Ge Huang, *How Eric Trump Became One of Crypto's Greatest Evangelists*, Wall St. J., Aug. 21, 2025.

Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."[36] This provision, often referred to as the "Rulemaking Clause," enables Congress to insulate itself against external forces, and it ensures that the executive and judiciary cannot encroach upon Congress's legislative independence.

In handling questions related to this clause, the Supreme Court has consistently maintained that Congress's rule-making abilities are absolute and perpetual. Most prominently, in *United States v. Ballin* (1892), the Court held that "[t]he Constitution empowers each House to determine the rules of its proceedings," and such power "[i]s not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and…[is] absolute and beyond the challenge of any other body or tribunal."[37] Establishing that both the House and Senate have sweeping authority to establish their own rules of procedure, this precedent affirmed Congress's ability to self-regulate and ensured that rules governing member behavior, ethics, and financial activities would have to come from the legislature itself.

As such, the imposition of a statute that prohibits congressional stock trading–particularly by the executive or any other regulatory agency–would represent an intrusion upon this constitutionally protected legislative territory. The Rulemaking Clause alone enables Congress to determine whether or not the conduct of members is permissible; any law delegating this responsibility to the Department of Justice or the Securities and Exchange Commission (SEC) would represent an explicit constitutional violation and would threaten to erode the separation of powers. Any such statute would also place congressional officials under the supervision of executive branch officers– the very

[36] U.S. Const. art. I, § 5, cl. 2.
[37] United States v. Ballin, 144 U.S. 1 (1892).

people that Congress itself, under Article I, is charged with overseeing. This would represent a complete inversion of the constitutional responsibilities delegated to the respective branches, and would undermine the system of checks and balances that underscores governmental action.

Beyond the obvious structural difficulties posed by the Rulemaking Clause, a ban on congressional stock trading would also raise serious concerns under the First and Fifth Amendments. The Due Process Clause of the Fifth Amendment, in particular, prohibits the federal government from depriving any person of "life, liberty, or property without due process of law."[38] The ownership of financial assets, including corporate securities, is a core component of this constitutional liberty, as stocks themselves constitute a form of private property. Any categorical ban on congressional stock trading, therefore, would strip a specific class of citizens–members of Congress– of an ordinary property right afforded to every other citizen solely based on the office they hold, in direct violation of the Due Process Clause. A ban would also raise serious equal protection issues under the Fifth Amendment, as the Supreme Court has long held (particularly in *Bolling v. Sharpe)* that the Due Process Clause incorporates equal protection principles to the federal government. As such, enacting a ban, especially without individualized due process and specific findings of wrongdoing, would target a distinct group of individuals and restrict their ability to engage in lawful economic activity simply due to their identification with a group.

The First Amendment concerns are no less significant. In *Citizens United vs. FEC* (2010), the Supreme Court ruled that personal financial resources–especially when used to advance a particular electoral aim, participate in public debate, or offer support for

[38] U.S. Const. amend. V.

policy positions–can constitute a form of political expression.[39] Investments in publicly traded companies by members of Congress, therefore, can be reflective of their ideological positions and personal beliefs, not insider information and malicious aims. To impose an outright ban on trading these securities, then, would infringe upon the expressive and associational freedoms that members of Congress possess by compelling financial disengagement from companies and causes central to both their professional lives and personal identities. This, once again, elicits concern about targeting legislators as a specific class of people that should be subject to legislation while others should be exempt–if individual citizens can harness their personal expertise, mental faculties, and intuition to make prudent financial choices, why should members of Congress not be allowed to do the same?

Given that a statutory prohibition on congressional stock trading would likely violate both the Rulemaking Clause and the individual-rights protections of the First and Fifth Amendments, the only constitutionally sound avenue to impose a congressional stock trading ban would be through internal congressional rulemaking, pursuant to Article I, Section 5, Clause 2. But, even if this were somehow enacted without overtly infringing upon the rights of members of Congress as a class, the likelihood that the legislators themselves would agree to such a measure is exceedingly small.

Central to the improbability of a self-imposed ban is an unavoidable conflict of interest: by voting to restrict congressional stock trading, members of Congress would be limiting their own financial autonomy. According to a 2021 study conducted by the Campaign Legal Center, approximately 93% of members of Congress hold either stocks

[39] Daniel I. Weiner, *Citizens United Explained*, Brennan Center for Justice (Dec. 12, 2019), updated Jan. 29, 2025.

or widely held investment funds (such as mutual funds, exchange-traded funds, or pensions).[40] Prohibiting themselves from trading these assets would force legislators to forgo potentially lucrative financial gains–an outcome that any member of Congress would be reluctant to accept[41].

This dynamic creates a classic collective action problem. Even if, in principle, a substantial contingent of members believe that restrictions on trading are necessary–indeed, a broad, bipartisan coalition of legislators has publicly endorsed the idea of a ban and introduced multiple bills to implement one–there remains no individual incentive for a particular congressperson to take the costly first step of actually divesting, for the immediate and individualized cost to the legislator (immense financial loss) does not outweigh the shared benefit (increased trust in government). As a consequence, Congress finds itself at a gridlock, whereby there is widespread agreement on the necessity of reform but an equally widespread unwillingness to bear its costs. Thus, the result is inaction–legislators grandstand and posture in the name of integrity and accountability, but aside from strongly worded statements and proposals that get stuck in committee, real progress remains elusive.

ii. A Ban as Constitutional

Alexander Hamilton, writing in *The Federalist No. 78*, articulated the judiciary's seemingly weak yet vital role in regards to maintaining checks and balances while refraining from judicial activism. Hamilton argues: "It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. . . . The courts must declare the sense of the

[40] Campaign Legal Center, Congressional Stock Trading by the Numbers ‑ 117th Congress (Feb. 18, 2022).
[41] Seddiq, Oma. *Sen. Tommy Tuberville, Who Violated Stock-Trading Rules 132 Times Last Year, Says It's 'Ridiculous' to Ban Lawmakers From Trading Stocks*. *Business Insider*, 9 Feb. 2022.

law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body."[42] As such, while a congressional individual stock trading ban should not be effectuated solely through a Court decision, a bill passed by the legislature and signed into law by the executive would pass constitutional scrutiny.

The argument that the Rulemaking Clause from Article I, Section 5, Clause 2 gives Congress total and absolute power to regulate its members, thereby insulating them from external law and preventing any statute from limiting congressional stock trading, is not supported by the Supreme Court's decision in *United States v. Ballin (1892)*.[43] *Ballin* was tasked with addressing procedural rules for quorum and vote counting, not substantive ethical or financial behavior.[44] Though *Ballin* did indeed recognize Congress's power to establish procedural rules, the Court explicitly limited that authority to procedural contexts, holding that Congress could determine its internal voting procedures without judicial interference.[45] The Court, however, did not address ethical oversight nor financial regulation. Even further, *Ballin* notes that congressional rules may not violate constitutional rights or limits, writing: "The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained."[46] Far from the scope of blanket immunity, *Ballin* establishes that Congress' procedural independence is still subject to constitutional boundaries. Thus, the

[42] The Federalist No. 78 (Alexander Hamilton).
[43] United States v. Ballin, 144 U.S. 1 (1892).
[44] Id.
[45] Id.
[46] Id.

application of *Ballin* to shield Congress from generally applicable legislation regulating personal financial conduct is a clear misreading of the precedent.

Contextually, the Supreme Court has also consistently maintained the difference between legislative acts and personal or administrative acts of the legislature. In *United States v. Brewster* (1972), the Court considered whether a member of Congress could claim immunity from bribery statutes under the Speech and Debate Clause.[47] The Court held that accepting a bribe, similar to engaging in stock trading based on knowledge of legislative activity, does not constitute an official legislative action; rather it is personal conduct. The Court asserts: "Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator."[48] By analogy, trading stock on the basis of inside knowledge or legislative duties is likewise not a legislative act, so *Brewster* undercuts any argument that such trading is categorically immune from statutory regulation just because the actor is a Member of Congress.

Simply put, the argument that Article I, Section 5 creates a constitutional bar to statutory stock trading regulation fundamentally misrepresents the Court's decisions in *Ballin* and *Brewster*. Procedural rulemaking powers are limited and cannot wholly protect personal conduct from legal regulation, including insider trading statutes.

Furthermore, the claim that a law severely regulating congressional stock trading, if enforced by the executive, would violate the separation-of-powers doctrine by allowing the executive to intrude into congressional affairs is also poorly constructed. In *Morrison v. Olsen* (1988), the Court upheld the constitutionality of an independent counsel statute

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[47] United States v. Brewster, 408 U.S. 501 (1972).
[48] Id.

that allowed the executive enforcement of laws against high-ranking officials, including officials of the legislative branch.[49] The Court sharply states that enforcement is permissible so long as it does not prevent core legislative functions such as drafting, debating, or voting. The Court wrote: "The fact that a given law or procedure is 'an inconvenience' or even 'burdensome' does not of itself render it unconstitutional; what is at issue is whether the Act, taken as a whole, is such as to impermissibly interfere with the President's constitutionally assigned functions." Stock trading, similar to bribery or other financial misconduct, once again does not constitute legislative activity, and therefore statutory enforcement does not intrude upon core legislative functions.

In *United States v. Nixon* (1974), the Court rejected claims that the president or any other governmental authority could not be compelled to comply with judicially enforced orders, establishing: "Neither the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."[50] This principle logically extends to Congress. Once more, the Court articulated that members of Congress may be subject to regulation or enforcement when engaging in conduct that falls outside the legislative scope. In practice, enforcing a congressional stock trading restriction via the U.S. Securities and Exchange Commission (SEC) or Department of Justice (DOJ) would constitute a neutral, generally applicable regulation of personal financial conduct. It does not hinder floor debate, vote counting, or committee procedures, and thus does not violate the separation-of-powers doctrine.

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[49] Morrison v. Olson, 487 U.S. 654 (1988).
[50] United States v. Nixon, 418 U.S. 683 (1974).

In terms of Fifth Amendment Due Process and Property Rights, the argument that banning stock trading deprives Congressmembers of property without due process fails to distinguish between unlawful deprivation of property and acceptable regulation during terms of office. First, the Court has long recognized that the government may impose conditions that limit how officeholders can engage with property without violating due process. In *United States v. Locke* (1985), the Court upheld regulations on corporate licensees and shareholders designed to protect regulatory goals.[51] In *Connell v. Higginbotham* (1971), the Court upheld restrictions on public employee conduct, reasoning that officeholders are subject to ethical and procedural constraints that may not apply to the general populus.[52] The Court has repeatedly shown that property rights are not absolute, especially for members of Congress during tenure of public office. Restrictions on property use that serve compelling state interests, such as conflicts of interest, do not violate the Fifth Amendment.[53]

In terms of First Amendment protections, the idea that stock trading constitutes political expression protected under the free speech principles, invoking *Citizens United v. FEC* (2010), is flawed.[54] Trading stocks ought to be treated as economic conduct and not expressive authority. In *Garcetti v. Ceballos* (2006), the Court held that speech from official duties greatly diminishes First Amendment protection.[55] Further, in *Rumsfeld v. FAIR* (2006), the Court clarified that alleged conduct does not become speech merely because it reflects personal beliefs.[56] Stock trading falls into the category of economic

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[51] United States v. Locke, 471 U.S. 84 (1985).
[52] Connell v. Higginbotham, 403 U.S. 207 (1971).
[53] Louis B. Jack, Constitutional Aspects of Financial Disclosure under the Ethics in Government Act, 30 Cath. U. L. Rev. 583 (1981).
[54] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).
[55] Garcetti v. Ceballos, 547 U.S. 410 (2006).
[56] Rumsfeld v. FAIR, 547 U.S. 47 (2006).

conduct, and even if it were partially expressive, statutes designed to prevent corruption are permissible exceptions to the First Amendment.

Finally, the assertion that because of the Rulemaking Clause and conflicts of interest, only self-regulation by Congress is constitutional or feasible mischaracterizes the Court's approach to regulating officeholders. In *Gravel v. United States* (1972), the Court allowed for a grand jury to question a Senator's aide and inquire into arrangements for the private publication of the Pentagon Papers, holding such activities outside the protected sphere of legislation.[57] By permitting grand jury and executive branch investigation of non-legislative conduct, the Court rejected the idea that Congress alone may police such activity.

Perhaps the most compelling case for a more thorough statute on congressional stock trading may be from premises understood by the country's Framers. A 2013 *Harvard Law Review* article titled "Politicians as Fiduciaries" examines the political theory underlying the government's implied fiduciary responsibility.[58] The article correctly argues that applying a fiduciary framework to elected officials and the political process at large begins with recognizing that politicians bear a "duty of loyalty" to the people they represent.[59] This idea aligns with both constitutional history as well as historical enlightenment thinking. The article cites John Locke's *Second Treatise*, arguing that governments hold power in trust for public good. The Constitution operates as a social contract, as private citizens forgo a portion of their liberty in exchange for public benefit.[60]

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[57] Gravel v. United States, 408 U.S. 606 (1972).
[58] D. Theodore Rave, Politicians as Fiduciaries, 126 Harv. L. Rev. 671 (2013).
[59] Id.
[60] Id.

Despite the fundamental principles followed by the architects of the Constitution, the strongest argument against a total ban may be its immediate implications. A total ban on congressional stock trading could render markets more volatile and unpredictable, while potentially incentivizing members of Congress to pursue less transparent workarounds. This argument warrants reasonable concern, yet threats to public trust are rarely justifiable as articulated by the Court. Even as recent as the case *303 Creative LLC v. Elenis* (2023), the Court stressed the constitutional protection of individual rights, and by extension constitutional principles, despite the controversial implications that may ensue.[61] Similarly, the landmark *Brown v. Board of Education* (1954) case was ridiculed by contemporaries to inflict exhaustive national issues, yet the country ultimately prevailed.[62] While it may be pragmatic to propose a less restrictive, non-total ban on congressional individual stock trading because it is more likely to pass, using a fallout-style argument against a total ban is fallacious.

All totaled, historical and contemporary legal principles demonstrate that statutory regulation of congressional stock trading is constitutional. Although the Rulemaking Clause grants Congress procedural autonomy, Supreme Court precedent, from *Ballin* to *Brewster*, *Gravel,* and *Powell*, make clear that this autonomy is limited to legislative acts and procedural business and thus cannot shield personal financial conduct from generally applicable law. Separation of powers threats do not totally exclude executive enforcement of such statutes, as the Court has historically upheld neutral enforcement that does not interfere with principal legislative functions, described in *Morrison* and *Nixon*. Additionally, neither the First Amendment nor the Fifth Amendment prohibits such

[61] 303 Creative LLC v. Elenis, 600 U.S. 570 (2023).
[62] NAACP Legal Defense Fund, The Southern Manifesto and "Massive Resistance" to Brown v. Board.

regulation as an officeholder's property rights and expressive freedoms are not absolute when weighed against compelling interests like preventing corruption, described in *Locke*, *Higginbotham*, and *Garcetti*. Historical and philosophical understandings of public office as a fiduciary reinforce this notion, reflecting the Founding Fathers' vision that elected officials hold power for the public welfare and not personal profit. And though practical concerns about enforcement and consequences of the market warrant concern, they should not override constitutional authority or the duty to maintain public trust. Congress, consistent with the Constitution, can be subject to statutes restricting stock trading, restoring the integrity of the legislature and the public's confidence in representative government.

V. Blueprint for Reform

In the short term, the most feasible way to address the congressional stock trading issue would be to strengthen the existing disclosure regime rather than enacting sweeping structural changes. Although the STOCK Act mandates PTRs within 30 to 45 days of completing a transaction, penalties for violations are minimal–a Member of Congress pays only a 200 dollar fine for a first-time violation–and enforcement is scant.[63]

As such, an obvious step that Congress can take to reform the STOCK Act is to tighten the disclosure window. Rather than allowing members of Congress to wait over a month to report their transactions, they should be limited to two business days, precisely the same amount of time that corporate insiders–who arguably have *less* influence over financial markets than members of Congress–have to report their transactions to the SEC

[63] Campaign Legal Center, *Congressional Stock Trading and the STOCK Act* (Sept. 5, 2025).

through Form 4.[64] Instituting this restriction would deter members of Congress from making any trades that are not immediately explainable to the public and would enhance the information environment for watchdog groups, through which more effective oversight would emerge.

Another easily accessible vantage point for reform of the STOCK Act revolves around more severe punishments for violations. A 200-dollar fine–an amount that would likely be dwarfed by the gains that a Member of Congress would realize from a trade–can hardly be called a deterrent for illegal behavior. Rather, fines for an illegal trade should follow a tiered structure that depends on the size of the trade itself. For example, a trade worth under 5,000 dollars would incur only a small, fixed fee, while trades in excess of 250,000 dollars would require a payment of 10-15% of the transaction value. This system ties the amount of the fine directly to the personal gain that would be extracted from the trade, creating a more effective deterrent than a meager 200-dollar fee that wields very little capability to prevent malicious behavior.

There need not be widespread structural change for Congress to more effectively deter insider trading and illegal financial activity. Within the legislative infrastructure that already exists–the STOCK Act–there are a series of penalties, enforcement mechanisms, and oversight parameters that can effectively prevent corruption. It is imperative upon Congress, though, to heighten the existing disclosure regime and punishment structure to actually instigate the change that Americans desire.

VI. Conclusion

[64] Meridian Compensation Partners, Key Insight: Insider Trading Rules—Section 16 (Dec. 10, 2015).

While asking the Court to unilaterally ban or regulate congressional stock trading would be inappropriate, a law passed by Congress *would* withstand constitutional scrutiny. Therefore, those in favor of such regulation must continue to elevate the grassroots movement, advocating for the passage of such legislation.

Congressional stock trading sits at an important intersection of constitutional structure, public trust, and institutional self interest. Dating back to the flour scandal involving Samuel Chase to the passage of the STOCK Act, our country's history demonstrates a persistent tension within government between private gain and public duty. While modern outrage has intensified in the wake of The Great Recession, the COVID-19 pandemic, and the rise of digital transparency, an underlying principle remains constant: our elected officials ought not exploit public office for personal benefit.

Despite claims that a statutory ban would violate Article I autonomy or infringe upon First and Fifth Amendment protections, Court precedent makes it clear that the legislature's rulemaking power is procedural and not absolute. Cases such as *Ballin*, *Brewster*, and *Olson* highlight that personal financial conduct falls outside the protected sphere of legislative acts, which therefore may be subject to generally applicable laws. Stock trading is an economic activity and not a core legislative function. As such, statutory regulation, whether through strengthened disclosure requirements or an outright ban, must withstand constitutional scrutiny when crafted to serve the compelling interest of preventing corruption and promoting public trust in government.

However, practical and political barriers remain challenging. The collective action problem within Congress makes a total ban difficult as hyper-partisan dynamics further complicate the likelihood of passage. Nevertheless, the Founders' fiduciary vision of

public office, rooted in social contract theory and obligation of loyalty to the people, supports at least some regulation that reinforces the great virtue of integrity.

Ultimately, meaningful reform need not begin with abrupt, revolutionary change. Strengthening the existing STOCK Act through faster disclosure windows and effective proportional penalties would significantly enhance deterrence without disrupting legislative function.

Whether through incremental or comprehensive prohibition, Congress possesses both the authority and the constitutional power to regulate its members' financial conduct. This paper seeks to advance the contemporary movement toward greater transparency and responsibility for public institutions. Our greatest strength is not the result of our complex governmental infrastructure or our robust military; rather, it is the timeless notion that ultimate power is derived from the people. George Carlin, the late comedian and social critic, protested: "[governments] don't want a population capable of critical thinking."[65] Government accountability must once again be rigorously upheld, starting with a robust regulatory framework on congressional stock trading.

[65] George Carlin, Life Is Worth Losing (HBO television broadcast, Nov. 5, 2005).