

Ethics Round-Up: STOCK Act Amendment; STOCK Act Suit; House Ethics Actions

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STOCK Act Periodic Disclosure Requirements Amended to Cover Trades by Congressional Spouses and Dependents

On August 16, 2012, President Obama signed into law a brief, hastily passed amendment to the Stop Trading on Congressional Knowledge (STOCK) Act of 2012 providing that the periodic transaction reports required by the Act must be filed in connection with securities trades by a spouse or dependent child of a Member or covered employee of the U.S. House. This amendment addresses—and reverses—the House Committee on Ethics' previously issued interpretation of the language of the STOCK Act, as originally enacted, regarding the requirement for covered officials to disclose securities transactions, exceeding \$1,000 in value, within 30 to 45 days of the trade date. The House Ethics Committee had previously advised that this reporting requirement applied only to trades by a Member or covered House employee him or herself and not to trades by a spouse or dependent child.

As described in a July 2012 *Election Law News* article (“Congressional Ethics Committees and OGE Disagree on the Scope of STOCK Act Transaction Reports”), in their separate written advisories issued in June 2012, the House Committee on Ethics, the Senate Select Committee on Ethics and the executive branch Office of Government Ethics (OGE) differed in interpreting the scope of the STOCK Act's periodic transaction reporting requirement. The House Ethics Committee and OGE advised that the new reporting requirement did not extend to transactions by spouses and dependent children; the Senate Ethics Committee read and applied the same statutory language as affirmatively requiring reporting of spousal and dependent child transactions. Within two weeks of a July

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19, 2012, CNN report on this interpretative discrepancy, however, the House and Senate—on August 2, 2012—passed a brief amendment to the STOCK Act bringing the scope of the periodic transaction reporting requirement in the House in line with the Senate reading of the Act: transactions by spouses and dependent children must now be reported in both the House and Senate. The House Ethics Committee issued a revised advisory memorandum about the requirement on August 17, 2012.

The intra-branch discrepancy was resolved, but an inter-branch interpretative discrepancy remained. The August 2 amendment to the STOCK Act did not reach OGE's interpretation of the periodic transaction reporting requirements for executive branch personnel. Thus, while both houses of Congress are now in agreement that spouse and dependent child transactions must be disclosed on the periodic reports, covered executive branch officials and employees are not required to disclose such transactions on their periodic reports.

Senior Executive Branch Employees Sue to Challenge the Constitutionality of the STOCK Act's Online Disclosure Requirements

The amendment to the STOCK Act passed by Congress on August 2, 2012 and signed by President Obama on August 16, 2012 also contained a section delaying for one month the mandate that all annual financial disclosure forms—and periodic transaction reports—filed by Members, officials and employees of the legislative and executive branches be posted and made available online to the public. The STOCK Act called for this online posting mandate to be met by August 31, 2012; as amended, the Act required online posting by September 30, 2012.

This delay in implementation of the STOCK Act's online disclosure requirements was precipitated by vocal and organized criticism by groups representing federal executive branch officials and employees that the requirements would constitute an invasion of privacy and would put covered employees at risk of identity theft. On August 2, 2012—the same date that Congress passed the STOCK Act amendment—the ACLU filed suit in federal district court challenging the Act's online disclosure requirements on behalf of the Senior Executives Association, the American Foreign Service Association, the Assembly of Scientists, the National Association of Immigration Judges and seven individual high level federal officials. The ACLU's complaint names the United States and the Acting Director of OGE as defendants and alleges that the online publication of individuals' financial disclosure filings will violate their “constitutional right to privacy in their personal financial information.” The complaint alleges further that the posting of personal financial disclosure forms online will expose disclosing individuals to a range of “irreparable injuries” and risks, including identity theft, phishing and even possible physical harm.

On September 13, 2012, Judge Alexander Williams of the U.S. District Court in Greenbelt, Maryland, granted plaintiffs' motion for a temporary preliminary injunction, further delaying implementation of the new disclosure requirements for covered executive branch officials. Judge Williams found that the plaintiffs showed “a strong likelihood of irreparable harm” absent preliminary injunctive relief. The court stayed briefing on the motion for a preliminary injunction until September 24, 2012, by which date—if Congress has mooted the issue by revising or removing the new online disclosure requirements with respect to executive branch officials—proceedings on

the preliminary injunction motion will go forward.

House Ethics Actions: Rep. Laura Richardson Reprimanded; Rep. Robert Andrews Investigated

Reprimand of Rep. Richardson. On August 1, 2012, the House Committee on Ethics submitted a report to the full House of Representatives detailing numerous violations by Rep. Laura Richardson (D-CA)—including violations concerning misuse of official House resources for campaign and personal purposes—and recommending that the House adopt its report and, thereby, vote to reprimand Rep. Richardson. By voice vote on August 2, 2012, the House adopted the Committee's report and officially reprimanded Rep. Richardson.

The Committee's report details Rep. Richardson's serious violations of House standards of conduct, including requiring and compelling her official staff to perform campaign work and obstructing the Committee's investigation through "the alteration or destruction of evidence, the deliberate failure to produce documents responsive to requests for information and a subpoena and attempting to influence the testimony of witnesses." With respect to Rep. Richardson requiring official staff to "volunteer" for her campaign, the Committee's report cites the Representative's chief of staff as telling employees: "If you know anything about [Representative Richardson], you probably will not have a job, you know, if you don't volunteer." One employee testified to the Committee that "I knew it was the highway or the byway, either adhere to what [Representative Richardson] wants or you are out."

Although Rep. Richardson admitted to the violations set forth in the Committee's report and agreed to a House reprimand to resolve the long-pending matter before the Committee, in addressing the House before its vote to reprimand, Rep. Richardson appeared to deny some of the charges. Rep. Richardson stated: "I want to make emphatically clear . . . I have never taken or threatened any action against any staffer who did not volunteer to work on my campaign."

Committee Investigation of Rep. Robert Andrews Extended. On August 31, 2012, the House Committee on Ethics announced that it was extending its investigation of Rep. Robert Andrews (D-NJ) in connection with allegations, among others, that Rep. Andrews improperly used campaign committee or leadership PAC funds to pay for a personal family trip to Scotland in 2011 and to pay for his daughter's graduation party in 2011. This matter was referred to the Committee for further investigation in April 2012 by the Office of Congressional Ethics (OCE). In announcing the extension of its investigation, the Committee on Ethics did not announce the formation of an Investigative Subcommittee; the Committee is proceeding under a rule that allows for further investigation by staff under the direction of the full Committee Chair and Ranking Member. In connection with its August 31 announcement, the Committee did release the OCE's Report and Findings concerning Rep. Richardson.