

Statement by Senator Scott P. Brown

December 1st, 2011

Before the

U.S. Senate Homeland Security & Governmental Affairs Committee  
Hearing

**“INSIDER TRADING  
AND CONGRESSIONAL ACCOUNTABILITY”**

A few weeks ago, “60 Minutes” featured a segment about Members of Congress’ insider trading advantage, which garnered widespread public attention. The recent “60 minutes” investigation revealed something we already know: there is something wrong in Washington that needs to be fixed so that we can regain the trust of the American people. At a time when the American people’s trust in Congress is close to an all time low, it is more important than ever that members’ of Congress affirm that we live by the same rules as everyone else. Serving the public is a privilege and an honor, and should not be used as an opportunity for personal gain. Simply put, members of Congress should be held to the same standard as the general public and should not be able to profit based on nonpublic information.

That is why I have introduced in the Senate the Stop Trading on Congressional Knowledge (STOCK) Act of 2011 and the accompanying Senate Resolution, which would prohibit members or employees of Congress, as well as Executive Branch employees, from using nonpublic information obtained through their public service for the purposes of investing or otherwise making a personal financial gain.

Consider this: A Member of Congress hears during a meeting that a program is going to be cut the next day. That member could then sell

his or her stock in that sector and score a profit - or avoid losses - when the news breaks. Under current law, the congressman would likely walk away with a fatter investment account. For everyone else, it could mean you go to jail.

Arguing that current laws already apply to members of Congress and staff, some scholars see no need for the STOCK Act. Other scholars argue that members of Congress have no fiduciary duty to prevent members from trading on material nonpublic information. The mere existence of this debate is enough to show that we must clearly define a blanket affirmative duty on members of Congress to the American public pertaining to confidential nonpublic information. Not defining this duty will leave a “gap” of uncertainty that invites abuse and contributes to a breakdown of trust among the American people.

This legislation is directly aimed at correcting this problem that academics such as Professors Ziobrowski and Bainbridge have identified. Professor Ziobrowski’s work found that some members of Congress’ investments may have benefited from an informational advantage over members of the general public. In his recently published book, “Throw Them All Out,” author Peter Schweizer, a fellow at the Hoover Institute, reports that members of Congress are making a killing in real estate by approving the use of federal funds for projects that enhance the value of buildings and land that they own.

As members of Congress, we have access to information that the public does not; classified briefings, closed conference reports and personal conversations with government officials. All of these sources can give us nonpublic information that may have a significant value if traded upon. But not only do we access information, we create information and policy. When we act on legislation or negotiate legislative language, frequently that legislation has real financial consequences to an industry or company. Because we have access to and we create information, we must not betray the public’s trust by using it for our own personal gain.

Doing so diminishes public trust and that is why I called for this hearing here today. I suspect we will hear from some witnesses at today's hearing that existing laws and rules are sufficient. Yet, there have been no successful prosecutions of members or their staff and I believe the uncertainty surrounding the existing legal framework provides an excuse for enforcement agencies to avoid the politically difficult task of policing Congress. We must close this loophole.

I believe that the vast majority of Members and staff of Congress are here to serve their constituents best interests, not to line their pockets. But by explicitly prohibiting the use of material nonpublic information for personal gain, we will vastly increase transparency while restoring some public faith in Congress.

The legislation I have introduced is similar to the bipartisan legislation that has been introduced in the House of Representatives over the past few years but has languished as Congress has lacked the will to affirm that we live by the same rules as everyone else. I would also like to recognize the leadership on this issue of retired Congressman Baird and Congresswoman Slaughter who introduced the Stock Act back in the 109<sup>th</sup> Congress. Congresswoman Slaughter and Congressman Walz have continued the effort to close this loophole.

The recent media attention means that the American people are watching to see if we are serious about regaining their trust.

I am not afraid of acting in the public's interest, and that is why I introduced this legislation to improve Washington. The Stock Act is critically needed and should not be a partisan issue. I strongly encourage my colleagues to listen to the American people and take an important step towards regaining their trust -that is why action is needed now.

###