

Frank Act, both of which have dramatically increased regulatory uncertainty and created new economic distortions.

Obviously, Republicans are not against all regulations, and we support a strong social safety net. But we are against economically damaging regulations that fail a simple cost-benefit test. Both the ACA and Dodd-Frank would fail such a test, as would the 2002 Sarbanes-Oxley law. In late 2008 and early 2009, the Securities and Exchange Commission surveyed publicly traded firms affected by section 404 of Sarbanes-Oxley and it found that “a majority felt that the costs of compliance outweighed the benefits. This was especially true among smaller companies.”

While President Obama pays lip-service to economic growth on the campaign trail, many of his policies have undermined that goal. It is hard to create jobs at the bottom when you are obsessed with attacking people at the top.

The case for growth and success-oriented policies is not just practical, it is moral. The biggest economic favor policymakers can do for Americans is to support policies that make more opportunity, mobility, and the possibility of earned success.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

HONORING OUR ARMED FORCES

STAFF SERGEANT PERNELL HERRERA

Mr. UDALL of New Mexico. Mr. President, I rise today as we enter a new year to honor a brave young soldier who, sadly, did not see this new year. Army SSG Pernel Herrera died December 31, 2011, while serving in Afghanistan. He was 33 years old.

At times like this, words of elected officials seem so inadequate. Words will not ease the profound loss of Staff Sergeant Herrera's family. Words will not fully express our gratitude for Staff Sergeant Herrera's service to our Nation. But the death of a young soldier like Staff Sergeant Herrera demands our attention. It demands our respect, and it demands that we remember.

Pernel Herrera just wanted to serve his country. He enlisted in the New Mexico National Guard in 2006. He was assigned to C Company, 1st Battalion, 171st Aviation Regiment, and he served honorably over the last 5½ years. His journey ended in the course of that service. We are forever in his debt.

When we talk about our fallen soldiers, we honor their sacrifices and we also honor their lives. Pernel Herrera was born in Los Alamos. He grew up in Espanola and graduated from Espanola High School. He leaves behind a son Julian and a daughter Alicia.

Pernel wrote about himself on his Facebook page the following description:

I am a very easygoing dad of one son, and one daughter. They are the biggest joys of my life. I enjoy spending my free time with

my mom, and brother, family and friends. I'm currently in Afghanistan with the United States Army. I have served in the military for 5 years.

In the decade that our military has been fighting in Afghanistan, thousands of our fellow citizens have volunteered in service to our country. They have put their own safety at risk to protect the safety of others—in defense of the ideals we hold so dear. Some of these brave warriors, such as Staff Sergeant Herrera, tragically, do not come home.

To Staff Sergeant Herrera's family, I offer my deepest sympathies. We mourn your loss while we also honor his dedication to our country, and we are thankful for his service.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOEVEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HOEVEN. I thank the Chair.

(The remarks of Mr. HOEVEN pertaining to the introduction of S. 2041 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. HOEVEN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE STOCK ACT

Mr. LEVIN. Mr. President, the lifeblood of our democratic government is the contract between the people and their elected representatives—a contract that must be based on trust that elected officials will act for the good of our Nation and in the interests of their constituents and not for personal gain. To ensure that we maintain that trust, our Nation has laws and our Congress has rules that establish clearly the responsibilities of government officials, Members of Congress, and their staffs and that provide for the enforcement of violations. The legislation that will be before us is, in a way, preventive maintenance to protect that trust. It is a tightening of our legal and ethical guidelines as part of what must be a constant effort to ensure that the interests of our Nation and our constituents come first. Our constituents must have confidence that Members of Congress and our staffs will not use our positions for our personal financial benefit.

There should be no doubt that regardless of our action on this legislation, the STOCK Act, it is a violation of the trust our constituents placed in us, a violation of the democratic process, a violation of the securities laws, and a violation of congressional ethics rules for Members of Congress or their employees to engage in insider trading—the use of information not available to the public to make investment decisions.

Insider trading is and will remain prohibited for Members of this body to seek private profit through their public responsibilities, no matter the fate of this bill. But questions have been raised about insider trading by Members of Congress. The legislation before us today is designed to ensure that those questions are answered. It removes any doubt that insider trading by Members and employees of Congress is against the law and against congressional rules. It is important to remove that doubt because any appearance of a breach in trust between Congress and our constituents is so corrosive to honest, open, and effective government.

Back in December, the Homeland Security and Governmental Affairs Committee held extensive discussions on the need to preserve that trust, including a very productive hearing on December 1. Later in December, the committee held a markup and approved the Stop Trading on Congressional Knowledge Act, or the STOCK Act. I commend Chairman Senator LIEBERMAN and our ranking member, Senator COLLINS, for their leadership and the many members of the committee, Democratic and Republican, who made contributions to that process.

Two things became clear during our hearings and markup. First, there was consensus that we should remove any uncertainty about the prohibition on insider trading. The second thing that became clear was that there was a significant bipartisan desire to avoid any unintended consequences as we sought to remove any uncertainty. We reported out the legislation because of widespread agreement on our goals, but their remained concerns about the means, and it was understood that we would attempt to address those concerns before this bill came to the floor. So a number of us have worked in the weeks since to make sure our goals and our means are in concert. The revised legislation, which will be before us, meets that objective. It should remove any uncertainty over the prohibition on insider trading, and it avoids unintended, harmful consequences that concerned some of us.

I will point to two provisions that I believe are important to achieving those goals. The first reassures the American people that there are no barriers to prosecuting Members and employees of Congress for insider trading. It does so through language establishing that Members and employees of Congress have a duty arising from “a relationship of trust and confidence”

with the Congress, the government, and, most important, with the American people. Establishing such a duty removes any doubt as to whether insider trading prohibitions apply to Congress. It is also important that the bill language makes clear that in offering this new language, it does not in any way prevent enforcement of the anti-insider trading provisions contained in current law. Again, I am confident that, under current law, Members of Congress and our staffs are prohibited from insider trading. This bill will ensure that the current prohibition is unambiguous and thereby strengthened.

The second major provision of the legislation instructs the ethics committees of both Chambers to issue clear guidance to Members and staffs on the prohibition on profiting from inside information. This guidance will clarify that existing rules in both Chambers relative to gifts and conflicts of interest also prohibit the use of nonpublic information gained in the conduct of official duties for private profit.

Finally, one other provision I will briefly mention, which is unrelated to insider trading but nonetheless an important step forward in terms of gaining the confidence of our constituents. As one of the originators of the Lobbying Disclosure Act of 1995, I am well aware of the value of transparency in government. The bill before us improves congressional transparency by requiring that personal financial disclosure filings required of Members and certain staff are made available electronically to the public. I commend Senators BEGICH and TESTER for offering a measure that improves that transparent governance.

Mr. President, it is important we pass this legislation, that we clarify and strengthen our rules and our laws and end any uncertainty about insider trading by Members of Congress. I hope we can promptly pass this legislation.

Again, I commend our chairman and ranking member and all the members of our committee for the work they have put into this bill.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

STOP TRADING ON CONGRESSIONAL KNOWLEDGE ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2038, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 2038, a bill to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 5:30 p.m. will be equally divided and controlled between the two leaders or their designees.

The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Mr. President, I want to begin debate, and I do so with gratitude that the distinguished ranking member Senator COLLINS is here, as well as Senator BROWN of Massachusetts, whose original legislation, along with Senator GILLIBRAND, forms the basis of this proposal that comes out of our committee.

I want to go back to the beginning, to President Washington, whose Farewell Address seems to take on more relevance as time goes by, although it is obviously more than 200 years old now. Washington said in his Farewell Address that “virtue or morality is a necessary spring of popular government” and that we cannot “look with indifference” at anything that shakes that foundation or, continuing his metaphor, dries the spring.

I think we have to say in the long proud course of American history since then there have been very few times where the springs of trust in popular government have been more dry than they are in our time.

I am grateful my colleague Senator MCCAIN is not on the Senate floor now because when we get to this subject, he usually says: When you look at the public opinion polls on Congress, the numbers of people who have a favorable impression of this body are so low we are down to close relatives and paid staff. Usually, when I am with him, I add: I’m not so sure about all the paid staff.

But, in any case, we have an opportunity with this piece of legislation to take a small step forward toward rebuilding public trust in Congress and to restoring those necessary springs of popular government—the trust of the people in us. This goes back just to last fall and early winter. A book appeared by an author named Peter Schweizer who was then interviewed on “60 Minutes.” He made allegations that some Members of Congress and their staffs have used information gained on their jobs to enrich themselves with timely investments, particularly in the stock market. Those allegations, as Washington might have said, certainly dried the springs of trust that we should have with the American people, even more than they already are.

So today I am proud to rise to bring before the Senate the STOCK Act, which stands for Stop Trading on Congressional Knowledge Act of 2012. This piece of legislation puts into law language and reporting requirements that will make it clear to the American people we understand being a Member of Congress means we have a responsibility to the public, a public trust, and any Member of Congress or staff member here who violates that trust will be punished.

This bill was reported as an original bill out of the Committee on Homeland

Security and Governmental Affairs on December 14 with a bipartisan vote of 7 to 2. In advancing this bill, as I have said, Senator COLLINS and I worked closely with Senators GILLIBRAND and BROWN of Massachusetts, both of whom sponsored versions of the STOCK Act. Senator LEVIN, who has just spoken, worked closely with us on the substitute amendment that will be filed, and I thank them all for their contributions on this piece of legislation. I also thank the Senate majority leader, Senator REID, for deciding this important piece of legislation would be one of the first items we take up in Congress this year.

The specific rules making insider trading illegal are found in a large body of Securities and Exchange Commission regulatory activities pursuant to section 10(b) of the Securities Exchange Act of 1934 and court decisions interpreting those activities. Our Committee on Homeland Security and Governmental Affairs held a hearing on this topic in December, and the Securities and Exchange Commission actually filed a statement with us for the record declaring its belief that currently there is authority in the law to investigate and prosecute congressional insider trading cases. The chief enforcement officer of the SEC said:

Trading by congressional members or their staffs is not exempt from the Federal securities laws, including the insider trading prohibitions.

But other witnesses at that hearing, including Georgetown University Law Professor Donald Langevoort and Columbia Law School Professor John Coffee told us that while the SEC might be technically right, in their opinion there was ambiguity in the law and they couldn’t be sure how a court would rule if there was a challenge to the SEC’s authority to bring an insider trading case against a Member of Congress or a staff member.

That is because, as the professors explained, a person may be found to have violated insider trading laws only if he or she breaks a fiduciary duty, a duty of trust and confidence owed to somebody—typically to the shareholders of a company or to the source of the nonpublic information. They argued it is possible a judge might decide that Members of Congress do not have a fiduciary duty—in the way in which it has normally been interpreted—to anyone with respect to the nonpublic information that we receive while carrying out our duties.

Now, I must say that I find it hard to see it that way. It seems to me self-evident that a public office is a public trust and that Members of Congress have a duty to the institution of Congress, of course to the government as a whole, and ultimately, most importantly, to the American people not to use information gained during their time in Congress—and unavailable to the public—to make investments for personal benefit. But the fact is there