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October 29, 2020

Chairman David Skaggs  
Office of Congressional Ethics  
U.S. House of Representatives  
425 Third Street, SW, Suite 1110  
Washington, DC 20024

**Re: Ethics Complaint Against Rep. Dean Phillips Concerning Possible Violations of the STOCK Act, Federal Securities Law, and House Ethics Rules**

Dear Chairman Skaggs:

The Minnesota Voters Alliance is a nonpartisan organization focused on election research and voter education. We seek to increase voter participation in the election process and raise public awareness related to elections.

Vince Beaudette, Vicki Ernst, and Cindy Pugh are residents of the Third Congressional District of Minnesota.

This letter serves as an official complaint with the Office of Congressional Ethics (“OCE”).

Pursuant to Rule 3(A) of the OCE Rules for the Conduct of Investigations, we respectfully request that you begin an immediate investigation into Representative Dean Phillips’s apparent violations of the Stop Trading on Congressional Knowledge Act (the “STOCK Act”), Federal Securities Law, and House Ethics Rules.

A periodic transaction report filed by Representative Phillips in March<sup>1</sup> strongly suggests that he may have used nonpublic information related to the public health crisis caused by the spread of the novel Coronavirus, COVID-19, information that he derived from his official position as a member of Congress, for his own personal profit. Additionally, the evidence suggests he may have used nonpublic information related to the Paycheck Protection Program (PPP) and the PPP Flexibility Act to help secure a loan for a company he co-owns and then authored legislation to loosen restrictions on companies that received a PPP loan for his own personal gain.

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<sup>1</sup> Dean Phillips, Periodic Transaction Report, (filed Mar. 12, 2020) [https://disclosures-clerk.house.gov/public\\_disc/ptr-pdfs/2020/20016196.pdf](https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2020/20016196.pdf) (hereinafter, Phillips Transaction Report)

It is a basic standard of Congressional ethics that Members of Congress “should not in any way use their office for private gain.”<sup>2</sup> Each Member has a duty to “[c]onduct themselves at all times in a manner that reflects creditably on the House.” In a time of crisis, when hundreds of millions of Americans face unprecedented economic uncertainty, it is difficult to imagine any act that reflects more poorly on the House than using nonpublic information related to this public health crisis, or to craft legislation in response to a global pandemic, to enhance a Member’s own personal wealth

In addition to the potential violations of federal law and House Ethics Rules, the behavior of Rep. Phillips has eroded public trust in our government at a time when that trust is more necessary than ever. We respectfully request that the Committee immediately investigate these allegations and take appropriate action against Rep. Phillips.

### **Factual Background**

Rep. Dean Phillips serves Minnesota’s Third Congressional District.<sup>3</sup> He is ranked as the third-wealthiest member of the House of Representatives with an estimated net worth of at least \$77 million.<sup>4</sup>

As a member of Congress, Phillips has access to briefings and confidential information that could impact financial markets. Specifically, Phillips serves on the House Committee on Foreign Affairs, including the Subcommittee of Western Hemisphere, Civilian Security and Trade and the subcommittee on Africa, Global Health, Global Human Rights and International Organizations. Dean Phillips also serves on the House Committee on Financial Services which is tasked with “overseeing all components of the nation’s housing and financial-services sectors.”<sup>5</sup>

On February 27, 2020, the U.S. House Committee on Foreign Affairs held the “Coronavirus Disease 2019: The U.S. and International Response” hearing.<sup>6</sup>

On February 28, 2020, the House of Representatives held a closed-door coronavirus briefing in which national infectious disease expert Dr. Anthony Fauci said the coronavirus was “unlikely to disappear.”<sup>7</sup> Following a full House briefing on the coronavirus, some of Rep. Phillips’s colleagues stated that the coronavirus was an “enormous issue” and that the country was

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<sup>2</sup> U.S. House of Representatives, Committee on Standards of Official Conduct, 110th Cong., 2d Session, *House Ethics Manual*, [https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008\\_House\\_Ethics\\_Manual.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf).

<sup>3</sup> U.S. Congressman Dean Phillips, <https://phillips.house.gov/>

<sup>4</sup> Natasha Bach, *The Wealthiest Members of Congress – and How they Made their Millions*, Fortune, Dec. 31, 2019 (<https://fortune.com/2019/12/31/richest-members-of-congress-2019-net-worth/>).

<sup>5</sup> U.S. Congressman Dean Phillips, Committees and Caucuses, <https://phillips.house.gov/about/committees-and-caucuses>

<sup>6</sup> U.S. House of Representatives Committee on Foreign Affairs, Coronavirus Disease 2019: The U.S. and International Response, (Feb. 27, 2020) <https://foreignaffairs.house.gov/hearings?ID=FEFCFF17-A079-488E-8A87-6C22B0B5C110>

<sup>7</sup> Adam Cancryn and David Lim, *Republicans Storm out of coronavirus briefing after Democrat rips Trump’s response*, Politico, (Feb. 28, 2020) <https://www.politico.com/news/2020/02/28/house-coronavirus-trump-response-118121>

unprepared.<sup>8</sup> Also, on February 28, 2020, the House Committee on Foreign Affairs held a morning hearing in which Dean Phillips questioned Secretary of State Mike Pompeo about the State Department's preparedness for the coronavirus threat.<sup>9</sup>

***Dean Phillips purchased stock in companies that were poised to benefit from the coronavirus pandemic and government action.***

On February 28, 2020, the same day of the closed-door House briefing and the same day he questioned Pompeo about coronavirus preparedness, Rep. Phillips purchased up to \$255,000 worth of stock in several companies that were poised to profit from the coronavirus due to increased demand for lab testing and medical supplies.<sup>10</sup>

The purchases from Rep. Phillips included Abbott Laboratories, which subsequently received four emergency authorizations from the FDA for COVID-19 tests,<sup>11</sup> including approval for ID Now,<sup>12</sup> a rapid test used by the White House that can generate results in 5 to 13 minutes,<sup>13</sup> and Baxter International, a medical products manufacturer that experienced "significant revenue growth because of the novel coronavirus."<sup>14</sup>

***Dean Phillips sold stock in companies that were poised to be adversely impacted by the coronavirus pandemic.***

On February 28, 2020, the same day the House of Representatives held a closed-door briefing on the coronavirus and the same day Phillips questioned Secretary of State Pompeo about coronavirus preparedness, Dean Phillips sold up to \$335,000 of stock in companies poised to be adversely impacted by the coronavirus.<sup>15</sup>

Dean Phillips sold stock in two major retail companies: Macy's, the department store company which subsequently lost two-thirds of its value; and Simon Property Group, the largest mall operator in the United States.<sup>16</sup> Phillips was able to sell his shares right before retail stores

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<sup>8</sup> Clare Foran, et. al., *Lawmakers React after coronavirus briefing*, CNN (Feb. 28, 2020) <https://www.cnn.com/2020/02/28/politics/coronavirus-capitol-hill-briefing-concern/index.html>

<sup>9</sup> House Foreign Affairs Committee Hearing on Coronavirus Preparedness (Feb. 28, 2020) <https://www.youtube.com/watch?v=9Z-ScSXaOwU>

<sup>10</sup> Phillips Transaction Report

<sup>11</sup> Berkeley Lovelace Jr., *FDA Grants Emergency Use Authorization to Abbott Labs new coronavirus antibody test*, CNBC, (May 11, 2020) <https://www.cnbc.com/2020/05/11/coronavirus-fda-grants-emergency-use-authorization-abbott-labs-antibody-test.html>

<sup>12</sup> *Detect COVID-19 in as Little as 5 Minutes, FDA grants emergency use authorization for fastest available molecular point-of-care test for novel coronavirus*, Abbott, (Mar. 27, 2020) <https://www.abbott.com/corpnewsroom/diagnostics-testing/detect-covid-19-in-as-little-as-5-minutes.html>

<sup>13</sup> Michael D. Shear and Maggie Haberman, *White House Races to Contain Virus in Its Ranks: "It is Scary to Go to Work,"* New York Times, (May 10, 2020) <https://www.nytimes.com/2020/05/10/us/politics/white-house-coronavirus-trump.html>

<sup>14</sup> Omar Ford, *High Demand Caused by COVID-19 Helps Baxter beat 1Q20 Expectations*, Medical Device and Diagnostic Industry, (May 04, 2020) <https://www.mddionline.com/covid-19/high-demand-caused-covid-19-helps-baxter-beat-1q20-expectations>

<sup>15</sup> Phillips Transaction Report

<sup>16</sup> Id.

experienced a “catastrophic” March, the largest decline since the government started tracking the data.<sup>17</sup>

On February 28, 2020, Dean Phillips also sold up to \$15,000 of preferred securities in AerCap Holdings N.V.,<sup>18</sup> an aircraft leasing company whose stock price dropped by over 75% as a result of the pandemic.<sup>19</sup> On March 2, 2020, Phillips sold up to another \$15,000 of securities in AerCap Holdings N.V.<sup>20</sup>

The Administration did not announce the European travel ban until March 11, 2020<sup>21</sup> and did not declare a national emergency in response to the coronavirus until March 13, 2020.<sup>22</sup>

***A Company Dean Phillips co-owns Received a Six-Figure PPP Loan and Dean Phillips co-authored a Bill to Loosen Restrictions on PPP recipients.***

The personal financial benefits that Dean Phillips received during the coronavirus pandemic did not end with the stock transactions. Following the economic calamity resulting from the coronavirus and government restrictions, the United States acted quickly and passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020.<sup>23</sup> As part of the CARES Act, Congress established the Paycheck Protection Program, a \$669-billion loan program to provide capital to businesses impacted by the coronavirus pandemic.<sup>24</sup>

In April, a company Dean Phillips co-owns, MyMeds Inc., received a \$150,000 to \$350,000 PPP loan.<sup>25</sup> The loan was approved on the first day of the program.<sup>26</sup> In May, Dean Phillips co-authored the PPP Flexibility Act,<sup>27</sup> a bill that loosened restrictions on PPP loan recipients,<sup>28</sup> which was signed into law on June 5, 2020.

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<sup>17</sup> ‘Pretty Catastrophic’ Month for Retailers, and Now a Race to Survive, New York Times (June 1, 2020) <https://www.nytimes.com/2020/04/15/business/economy/coronavirus-retail-sales.html>

<sup>18</sup> Phillips Transaction Report

<sup>19</sup> AerCap Holdings N.V. (AER), Yahoo Finance, <https://finance.yahoo.com/quote/AER/>

<sup>20</sup> Phillips Transaction Report

<sup>21</sup> Kevin Liptak and Maegan Vazquez, *Trump says he’s suspending travel from Europe to US, though citizens and others are exempt*, CNN (Mar. 12, 2020) <https://www.cnn.com/2020/03/11/politics/donald-trump-coronavirus-statement/index.html>

<sup>22</sup> White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

<sup>23</sup> The CARES Act Works for All Americans, U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/cares>

<sup>24</sup> The CARES Act Provides Assistance to Small Businesses, U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

<sup>25</sup> Jeffrey Meitrodt, et. al., *58 Minnesota firms with political connections received large PPP loans*, Star Tribune, (Aug. 2, 2020) <https://www.startribune.com/58-minnesota-firms-with-political-connections-received-large-ppp-loans/571982322/?refresh=true>

<sup>26</sup> *Id.*

<sup>27</sup> Phillips Small Business PPP Flexibility Act Passes House in Overwhelming Bipartisan Vote, (May 28, 2020) <https://phillips.house.gov/media/press-releases/phillips-small-business-ppp-flexibility-act-passes-house-overwhelming>

## Legal Analysis

The Stop Trading on Congressional Knowledge Act of 2012 (the “STOCK Act”) established a duty for Members of Congress “arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities.”<sup>29</sup> Under the STOCK Act, a Member of Congress may not use “nonpublic information derived from such a person’s position as a Member of Congress . . . or gained from the performance of such person’s official responsibilities as a means for making a private profit.”<sup>30</sup>

In addition to the STOCK Act, which specifically addresses the use of nonpublic information by members of Congress and their staff, federal securities law generally prohibits any use of manipulative or deceptive practices in the purchase or sale of securities.<sup>31</sup> Under SEC regulations, such manipulative or deceptive practices include the misappropriation of any material, nonpublic information in violation of a duty of trust or confidence owed to the source of the information.<sup>32</sup> Material, nonpublic information includes “any information concerning a company, security, industry or economic sector . . . that is not available to the general public and which an investor would likely consider important in making an investment decision.”<sup>33</sup> Knowing or willful violations of the securities antifraud statute can result in criminal prosecution, and can be punished with imprisonment of up to 20 years.<sup>34</sup> Securities law also prohibits “tipping,” or passing material, nonpublic information on to others who may use that information to profit through securities trading.<sup>35</sup>

Finally, the House Code of Official Conduct prohibits House members from profiting from their Congressional position, or from “entering into any personal financial transactions to take advantage of any confidential information obtained through performance of their official governmental duties.”<sup>36</sup> Confidential information includes information related to legislation and amendments prior to their public introduction, and information learned in private briefings available only to members of Congress and their staff.<sup>37</sup>

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<sup>28</sup> Gibson Dunn, *President Signs Paycheck Protection Program Flexibility Act*, (June 8, 2020)

<https://www.gibsondunn.com/president-signs-paycheck-protection-program-flexibility-act/>

<sup>29</sup> 15 USCA § 78u–1(g)(1); U.S. House Committee on Ethics, “New Ethics Requirements Resulting from the STOCK Act” (Apr. 4, 2012)

<https://ethics.house.gov/sites/ethics.house.gov/files/Stock%20Act%20Pink%20Sheet.pdf>

<sup>30</sup> Pub. L. No. 112-105, § 3, 126 Stat. 291, 292 (2012)

<sup>31</sup> 15 USCA § 78j(b)

<sup>32</sup> 17 C.F.R. § 240.10b5-1

<sup>33</sup> U.S. House Committee on Ethics, *Rules Regarding Personal Financial Transactions*, (Nov. 29, 2011)

<https://ethics.house.gov/sites/ethics.house.gov/files/documents/fin%20trans%20pink%20sheet.pdf> (emphasis in original)

<sup>34</sup> 15 U.S.C. § 78ff(a)

<sup>35</sup> *Rules Regarding Personal Financial Transactions* at 2.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Id.* at 3.

Rep. Dean Phillips's Periodic Transaction Report from March 2020 disclosed transactions that could have led him to profit from various aspects of the Coronavirus crisis. The timing of the February 28 investments, following closed-door coronavirus briefings, in Abbott Laboratories and Baxter International, which stood to benefit from a global pandemic requiring unprecedented demand for lab testing and medical supplies, suggests that Rep. Phillips acted on nonpublic information related to the crisis. Publicly, many officials were not yet raising alarm about the outbreak or encouraging containment measures such as physical distancing and mask wearing. The extent of the coronavirus threat and subsequent stay-at-home orders that would eventually reach every state, forcing millions of Americans to work from home, was not fully known by the public until weeks later.

While we do not know what confidential information Rep. Phillips had access to, we do know that as the public health crisis worsened, he traded numerous stocks that would be impacted by the crisis and government actions, including actions from Congress, to mitigate the crisis.

Rep. Phillips seemed especially concerned about the coronavirus the morning of February 28. That morning, during a House Foreign Affairs Committee hearing, Rep. Phillips repeatedly questioned Secretary of State Mike Pompeo on the State Department's preparedness for the coronavirus. Rep. Phillips strongly suggested the State Department was not doing enough to prepare for the coronavirus and subtly described it as an "emerging global pandemic" during the terse exchange.<sup>38</sup> That same day, Dean Phillips would conduct nearly 40 stock transactions.<sup>39</sup> Specifically, the investments in Abbott Laboratories and Baxter International appear to be aimed at profiting from companies that not only stood to benefit from what Dean called the "emerging global pandemic," but also from the unprecedented demand for lab testing and medical supplies from government action.

On February 28, Rep. Phillips also engaged in a massive sell-off of stock in companies poised to be adversely affected from the coronavirus pandemic. Namely, he sold stock in two major retail companies – Macy's, the department store company which subsequently lost two-thirds of its value; and Simon Property Group, the largest mall operator in the United States – and sold corporate securities in an airline holding company, AerCap Holdings.<sup>40</sup> The retail and airline industries were subsequently among the hardest hit from the coronavirus pandemic and subsequent government mandated shutdown.

In total, 44% of Dean's stock transactions (40 of 91 transactions) in the February 10 – March 6 time frame took place on either February 27 or February 28, the two days in which he likely received critical and confidential coronavirus information as a member of Congress.

In the following months, a company Dean Phillips co-owns would go on to receive a six-figure PPP loan on the first day of the program. A little over a month later, Dean Phillips authored legislation that loosened restrictions on companies receiving PPP loans.

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<sup>38</sup> House Foreign Affairs Committee Hearing on Coronavirus Preparedness (Feb. 28, 2020) <https://www.youtube.com/watch?v=9Z-ScSXaOwU>

<sup>39</sup> Phillips Transaction Report

<sup>40</sup> Phillips Transaction Report

Immediate investigation is required to determine whether Rep. Phillips had access to nonpublic information that was material to his investment decisions, particularly stock transactions on February 27 and February 28, in violation of his duty of trust and confidence toward the American people with respect to information he learns as a member of Congress. Additionally, an investigation is required to determine whether Rep. Phillips violated House Ethics rules and used confidential information to advise his business partners, influence the PPP loan approval for MyMeds Inc., or pursue legislation to loosen PPP loan restrictions to benefit his financial interests.

We urge OCE to commence an immediate investigation into Representative Phillips' conduct to determine if any violation of the STOCK Act has occurred, or if he otherwise used his official position for personal profit in violation of Federal Law and/or House Ethics Rules.

We understand that 18 U.S.C. § 1001 applies to the information we are providing. To the best of our knowledge and ability all evidence submitted was not obtained in violation of any law, rule or regulation.

We call upon the Office of Congressional Ethics to launch an investigation into Rep. Dean Phillips immediately.

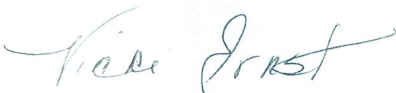
Sincerely,



Andy Cilek  
MVA Executive Director



Vince Beaudette  
Resident, 3<sup>rd</sup> District of Minnesota



Vicki Ernst  
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Cindy Pugh  
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