

As the Court is aware, Congress has thrice postponed this deadline. It is possible that Congress will do so again but, as on the prior occasions, Congress is unlikely to act (if it does act) until the last minute, especially as Congress is now in recess until April 8.

As the Court is also aware, as part of its second postponement of the Internet publication deadline, Congress commissioned the National Academy of Public Administration (the “National Academy”) to study the issues involved in this case. The National Academy’s report was issued last week, and it urges Congress to “indefinitely suspend the online posting requirements” of the STOCK Act. That report reinforces the need for a preliminary injunction in this case.

ARGUMENT

Plaintiffs incorporate by reference the memoranda and exhibits they have previously relied upon in petitioning for injunctive relief in this matter.¹

As this Court has recognized, Plaintiffs have demonstrated a likelihood of success on the merits. *See* Sept. 13, 2012 Mem. Op. (Doc. No. 26) at 13-14; Mar. 27, 2013 Mem. Op. (Doc. No. 74) at 17. Plaintiffs have shown that the Fourth Circuit has specifically recognized a constitutional right to informational privacy that protects their personal financial information and that their privacy and security interests in protecting such information from widespread publication on the Internet outweigh Defendants’ countervailing interests in combatting corruption. Plaintiffs have also shown that they will suffer immediate and irreparable injury if their personal financial information is published on the Internet. *See* Sept. 13, 2012 Mem. Op.

¹ Plaintiffs incorporate by reference the memoranda and exhibits in, *inter alia*, their original Motion for Preliminary Injunction (Doc. No. 3) (and Reply in support thereof (Docs. No. 47, 48)), Motion for Temporary Preliminary Injunction (Doc. No. 19) (and Reply in support thereof (Doc. No. 25)), Motion to Extend the Temporary Preliminary Injunction (Doc. No. 37) (and Reply in support thereof (Doc. No. 44)), and Renewed Motions for Preliminary Injunction (Doc. No. 53) and Temporary Preliminary Injunction (Doc. No. 54).

(Doc. No. 26) at 16 (stating that Plaintiffs “easily satisfy the requirement of imminence,” as the Internet publication deadline was “just over two weeks away”). The balance of the equities is in Plaintiffs’ favor. *See id.* at 17. Finally, the public interest would be served by an injunction against Internet publication. *See id.* at 19.

Those findings by the Court have been further supported by Congress and the National Academy. As noted above, Congress has thrice postponed Section 11’s Internet publication deadline. *See* Pub. L. No. 112-173, 126 Stat. 1310, 112th Cong. 2d Sess. (2012) (delaying effective date until September 30, 2012); Pub. L. No. 112-178, 126 Stat. 1408, 112th Cong. 2d Sess. (2012) (further delaying effective date until December 8, 2012); Pub. L. No. 112-207, 126 Stat. 1495, 112th Cong. 2d Sess. (2012) (further delaying effective date until April 15, 2013).

In the first extension, Congress formally recognized the serious dangers facing federal personnel and delayed online posting by an act entitled “[t]o prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes.” Pub. L. No. 112-173, 126 Stat. 1310.² This concern was voiced in the legislative history related to the extension: “application of one provision of the STOCK Act requiring online posting of financial data . . . would potentially impact the national security and the personal safety of national security and law enforcement professionals and their families.” 158 Cong. Rec. S5952 (daily ed. Aug. 2, 2012) (Statement of Sen. McConnell).

In the second extension, Congress tasked the Director of the Office of Personnel Management to contract with the National Academy to “conduct a study of issues raised by

² The second extension contained a similar title. *See* Pub. L. No. 112-178, 126 Stat. 1408 (“To change the effective date for the internet publication of certain information to prevent harm to the national security or endangering the military offices and civilian employees to whom the publication requirement applies, and for other purposes.”).

website publication of financial disclosure forms as is required under the STOCK Act,” and specifically to

examine the nature, scope, and degree of risk, including risk of harm to national security, law enforcement, or other Federal missions and risk of endangerment, *including to personal safety and security, financial security (such as through identity theft), and privacy*, of officers and employees and their family members, that may be posed by website and other publication of financial disclosure forms and associated personal information

Pub. L. No. 112-178, §§ 2(a)(1), (2)(b), 126 Stat. 1408-1409 (emphasis added). The legislation also required the National Academy to issue a report containing findings and recommendations to be presented to Congress and to the President. Pub. L. No. 112-178, §§ 2(a)(2), 2(c), 126 Stat. 1408-1409.

The National Academy issued its report last week. NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, *THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE* (Mar. 27, 2013), *available at* <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>. In the report, the National Academy urged Congress to “indefinitely suspend the online posting requirements that are due April 15, 2013, and the unrestricted access to searchable, sortable, downloadable databases, currently planned for October 2013, while continuing implementation of other requirements of the STOCK Act.” *Id.* at 63.

The National Academy’s report contains a well-researched and well-reasoned analysis of the harms that Plaintiffs have described to this Court. In finding that “[a]n open, online, searchable, and exploitable database of personal financial information about senior federal employees will provide easy access to ‘high quality’ personal information on ‘high value’ targets,” the National Academy relied upon the Fourth Circuit’s warning in *Walls v. City of Petersburg*, 895 F.2d 188, 194-95 (4th Cir. 1990), of the “need to be ever diligent to guard

against misuse,” as “technological advances have provided society with the ability to collect, store, organize, and recall vast amounts of information about individuals,” and cited with approval this Court’s reasoning: “[t]hat the EGA (Ethics in Government Act) already mandates the disclosure of such (financial disclosure) data does not change this conclusion [that Plaintiffs have shown a likelihood of prevailing on the merits of right to privacy claim]. As outlined above, section 11 of the Act directly and indirectly erodes key EGA safeguards to disclosure. Abandoning this relatively transparent application process, the Act ushers in a scheme of unfettered Internet access to the same sensitive information.” *Id.* at 55-56.

Given the recognition by this Court, Congress, and now the National Academy that the Internet publication of the personal financial information of Plaintiffs and other federal employees “impose[s] unwarranted risk to the national security and law enforcement, as well as threaten[s] . . . individual safety and privacy,” it is essential that this Court protect Plaintiffs’ right to privacy if Congress fails to adopt the National Academy’s recommendation to postpone Internet publication indefinitely or adopts another deferral of the publication by April 15, 2013. If Congress does not act, only this Court can protect the privacy, financial security, and perhaps even the lives of the executive branch employees subject to the STOCK Act’s Internet posting requirement.

Plaintiffs therefore respectfully request that this Court issue the Preliminary Injunction described above.

A proposed Preliminary Injunction order is attached.

Dated: April 3, 2013

Respectfully submitted,

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available on the websites of any agency of the United States or otherwise available on the Internet;

2) All Defendants, and their officers, agents and employees, as well as all other persons acting in active concert or participation with them, are hereby enjoined, until further order of the Court, from requiring employees to submit financial disclosure information so long as such information is subject to Internet publication by federal agencies; and it is further

ORDERED, that Defendants will give notice of the injunction, forthwith, to all executive agencies subject to Section 11 of the STOCK Act; and it is further

ORDERED, that as Defendants will not suffer financial damage as a result of this injunction, Plaintiffs shall not be required to post a bond, and this injunction shall be effective immediately.

SO ORDERED.

Dated: _____

Alexander Williams, Jr.
United States District Judge