BESTMUN'24

US SENATE STUDY GUIDE

WRITTEN BY:

EDANUR KAPAKLIKAYA (Under Secretary General)
YAĞIZ PATIR (Under Secretary General)

LETTER FROM THE SECRETARY-GENERAL

As the president of the Beştepe College Model United Nations Club and the Secretary General of the fourth annual edition of BESTMUN, it is my utmost honor to welcome everyone to our conference. Speaking on the behalf of the BESTMUN team as a whole, despite the many challenges we were put under, we believe we were able to present you a wonderful conference.

My name is Ebrar Nazife Korkmaz, I am a junior student at Beştepe College. I have partaken in the previous editions of BESTMUN in different positions and what was once a distant objective became reality. I am more than honored to be the Secretary General for such a prestigious conference with an academic team with enough knowledge and confidence that could conquer a nation. Model United Nations holds a special place in my heart and it always will. Since I first began in 2021, my passion has only strengthened.

Of course, such a conference wouldn't be possible without the aid of a hardworking organization team. I would like to thank my Director General and my best friend Duru Benzer for supporting me evertime and enduring untimely tasks I gave and tantrums I had throughout the preparation period. We began the thought process of BESTMUN'24 as soon as BESTMUN'23 ended and I'm glad we all share the same passion for this conference.
To my deputy, Sarina Fidan, you're more than your title holds, a life saver in all periods of the conference.

The aim of this conference is to raise delegates and to provide them with a quality experience that will ensure their acceptance to future prestigious conferences. This conference will prove that Model United Nations is not an overly optimistic play-pretend, but a channel for young diplomats to pursue their goals. Indeed, it is a great way to improve yourself and learn diplomatic courtesy. I would like to thank; everyone who held my hand through the path which led to this conference, my predecessors in MUN who made today's conferences the way they are and finally, I would like to thank you for partaking in our conference. We stay united to overcome.

Kindest Regards,
Ebrar Nazife Korkmaz

LETTER FROM THE UNDER-SECRETARY-GENERAL

Distinguished Senators and Honourable Participants,

I am pleased to welcome you all to the forth annual session of BESTMUN'24. I, Yağız Patır, am a freshman at TOBB ETU, and I am studying mechanical engineering and me and my friend Edanur Kapaklıkaya will be serving as Under Secretary-Generals for this years US: Senate Committee.

In TEDUMUN'24, when Eren Yalçın called me and asked me to attend the conference as President Pro Tempore even though I had no knowledge about US: Senate, I did not know that it was one of the best desicions that I take in my MUN carreer. Because I had no idea how much fun and energy it would be at the same time delegates catch the spirit of the real US: Senate during the sessions. To be honest, US: Senate is the most memoreble committee I attended of all time.

In order to maintain this spirit and keep this legacy of US: Senate once again me and Edanur take on responsibily when Nazife Ebrar Korkmaz and Sarina Fidan called us. Before finishing my letter I would like to thank wholeheartedly to my fellow friend Edanur Kapaklıkaya, if she was not there to help me the carry the bucket I would not able to do this committee by myself.

Also I would not like to thank to the Deputy Secretary-General of this conference and also my soulmate Sarina Fidan, since she finished my call credits. Lastly I would like to express my gratitude for my fellow friend, best archor in the world and Secretary General Nazife Korkmaz.

If you have questions about the committee you may contact me anytime:

yagizpatir@gmail.com

Sincerely,

Yağız PATIR.

Under-Secretary-General Responsible for the U.S. Senate

LETTER FROM THE UNDER-SECRETARY-GENERAL

Distinguished Participants,

I am Edanur Kapaklıkaya, a junior student at Ankara University, Faculty of Political Sciences. It honors me to welcome you to BESTMUN 2024 where I will be serving as the Under-Secretary-General of the United State's Senate of this year's installment.

For this committee, we have two agenda items namely "Insider Trade" and "Evaluating U.S. ~~Voting Rights, Election~~ Integrity, Campaign Finance Reform, and Protection From Foreign Interference." where Senators will deliberate on insider trading in the United States and the voting rights of the U.S. citizens. I sincerely thank Ebrar Korkmaz, the Secretary-General of this conference for being an amazing leader, who has been both understanding and meticulous in her work this whole time. I also would like to express my sincere thanks to Sarina Fidan, the Deputy-Secretary-General of this conference for her extraordinary work. Lastly, I would like to express my deepest gratitude and much love to my Co-Under-Secretary-General Yağız Patır, for his great efforts in preparing the academic materials and his dedication and hard work for the creation of this committee.

With all that being said, I welcome you once again and hope you read the guide and the Standing Rules of the United States Senate thoroughly.

You may contact me via edanurkapaklikaya@gmail.com for any further inquiries before the conference.

Sincerely,

Edanur Kapaklıkaya.

Under-Secretary-General Responsible for the U.S. Senate

I. INTRODUCTION TO UNITED STATES SENATE

1. **United States Senate**
2. **Historical Background of the United States Senate**
3. **Powers and Responsibilities of the United States Senate**

3.1Legislation of Bills and Constitutional Amendments

3.2Confirmation of Federal Officials and Judges

3.3Legislature Oversight of the Executive

3.4Impeachment Trials and Removal from Office

3.5Approval of Treaties

3.6Filibuster

4.Senate Leadership Roles

4.1Vice President

4.2President Pro Tempore

4.3 Senate Majority and Minority Leader

4.4 Party Whips

II. INTRODUCTION TO THE AGENDA ITEM I: EVALUATING U.S. VOTING RIGHTS, ELECTION INTEGRITY, CAMPAIGN FINANCE REFORM AND PROTECTION FROM FOREIGN INTERFERENCE

Historical Overview of U.S. Voting Rights

1.1 Early Voting Laws and the Expansion of the Electorate

1.2 Key Constitutional Amendments

1.3 Evolution of Election Integrity in the U.S.

1.4 Federal vs. State Roles in Administering Elections

III. INTRODUCTION TO THE AGENDA ITEM II: INSIDER TRADING IN THE U.S.

1. **Definition and Overview of Insider Trading**
    1. **Legal Definition**
    2. **Key Concepts**
    3. **Practical Examples**
2. **Historical Cases and Precedents**

1.Landmark Cases

2.Judicial Interpretations

3.Current Legislation and Regulations

1. **Key Laws**
2. **Regulatory Bodies**
3. **Recent Developments**
4. **Insider Trading Prohibition Act (ITPA)**
5. **Stop Trading on Congressional Knowledge (STOCK) Act**

4. Points Should Be Covered

IV. REFERENCES

I. INTRODUCTION TO UNITED STATES SENATE

1. United States Senate

The United States Senate serves as the upper chamber of Congress, complementing the United States House of Representatives in forming the federal bicameral legislature, as stipulated by *Article I* of the U.S. Constitution. Together, these two chambers possess the authority to enact or reject federal legislation. The Senate holds distinct powers, including the confirmation of presidential appointments, the approval of treaties, and the adjudication of impeachment cases initiated by the House of Representatives. Additionally, the Senate and the House collectively function as a check on the powers of the executive and judicial branches.[i]

The structure and responsibilities of the Senate are defined by *Article I* of the Constitution.

Each of the 50 states is represented by two senators, serving staggered six-year terms, creating a body of 100 members. From 1789 until 1913, senators were appointed by their respective state legislatures. However, following the ratification of the 17th Amendment in 1913, senators were elected through statewide popular vote.

As the upper house of Congress, the Senate exercises a range of advisory and consent powers, including the ratification of treaties and the confirmation of executive appointments such as Cabinet members, federal judges (including Supreme Court justices), military officers, regulatory officials, ambassadors, and other federal executive and uniformed officers. In the event no candidate secures a majority of electoral votes for the vice presidency, the Senate is tasked with electing the top two candidates. Additionally, the Senate is responsible for conducting trials of officials impeached by the House. Historically, the Senate has been regarded as a more deliberative and prestigious institution than the House of Representatives, attributed to its longer terms, smaller membership, and statewide constituencies, fostering a collegial and less partisan environment.

The Senate chamber is situated in the north wing of the Capitol Building in Washington, D.C. Although the vice president of the United States is not a senator, they serve as the presiding officer of the Senate, casting a vote only in the case of a tie. In the absence of the vice president, the President Pro Tempore, traditionally the longest-serving member of the majority party, assumes the role of presiding officer. The practice of electing floor leaders for the majority and minority parties began in the early 1920s. The Senate's legislative and executive agenda is managed by the majority leader, who occasionally negotiates with the minority leader. A notable procedural feature of the Senate is the filibuster, which can be countered by invoking cloture to bring the debate to a close.[ii]

2. Historical Background to the United States Senate

Although the U.S. Senate, in its current form, dates back to 1789 when Congress first convened as it is known today, it was not part of the original unicameral legislature envisioned by the Founding Fathers. Initially, the framers of the U.S. Constitution created the Articles of Confederation in 1777, which were ratified by the Continental Congress in 1781. This Congress, a temporary legislative body comprised of representatives from each of the original 13 colonies (later states), operated under the Articles of Confederation.[iii]

The Articles established a single-chamber Congress alongside the Supreme Court but notably did not create an Office of the President. Despite its broad powers, including the authority to declare war and negotiate treaties, other essential functions, such as taxation, were left to the individual states. Representation within this Congress was equal across states, regardless of population.

However, this system soon revealed its shortcomings. Larger, more populous states began to argue for greater representation, asserting that their larger populations warranted a stronger voice in government. Moreover, the unicameral structure lacked sufficient checks and balances, raising concerns about the potential for unchecked power.

In response to these issues, the framers convened at the Federal Convention of 1787—now known as the Constitutional Convention—to revise the existing government. During the summer of 1787 in Philadelphia, delegates debated and ultimately decided to form a bicameral legislature as outlined in Article I of the new Constitution. One of these houses, as George Mason of Virginia described, would be the "grand depository of the democratic principle of government." To balance this democratic influence, James Madison proposed a smaller, deliberative body that would be independent of the larger, more populous house—this body would become the Senate.[iv]

The design of the Senate—including its representation, the number of senators per state, qualifications for office, term lengths, and its distinct powers—was the result of intense debate and numerous compromises during the Convention. The framers drew inspiration from both the British system and state constitutions. Various committees worked throughout the convention to address these issues. The Committee of Eleven, appointed on July 2, provided a resolution to the deadlock over-representation in the two houses. By August 6, the Committee of Detail presented a draft Constitution that outlined the principles already agreed upon. Following this, another Committee of Eleven was appointed on August 31 to resolve the remaining questions. Lastly, the Committee on Style and Arrangement crafted the final language of the Constitution, which the delegates signed on September 17, 1787.

3. Powers and Responsibilities of the United States Senate

3.1 Legislation of Bills and Constitutional Amendments

Article I Section I of the U.S. Constitution dictates the U.S. The Senate has the power of legislation with the House of Representatives. On the grounds of legislation, the U.S. Senate has the same power as the House of Representatives. U.S. Senate members can introduce bills for legislation and can vote on the bill. The U.S. Senate has equal amounts of veto power as the House such as they can reject a bill even the House accepts. The same power and procedure follow for constitutional amendments.

U.S. Senate can introduce, repeal, examine, deliberate, accept, or denounce any act or bill by the power of the simple or super majority.

3.2 Confirmation of Federal Officials and Judges

Article II Section II of the U.S. Constitution dictates that the United States Senate is the sole appointer of upper federal executive officials and federal judges and Supreme Court justices that are nominated by the President of the United States. The U.S. Senate uses its

power by holding tribunals or committee sessions for the nominations. Members of the Senate that are responsible for the nomination tribunals question, examine, and confront the nominees and vote for whether to accept or reject the nomination of the President. The constitution also allows for a recess appointment. The appointment of the president while the Senate is in recess, but the Senate officially never enters a recess for that to happen.

3.3 Legislature Oversight of the Executive

Article I Section VIII of the U.S. Constitution dictates that Congress can establish tribunals that are inferior to the Supreme Court. This allows Congress and to that extent the U.S. Senate to investigate, examine, and even indict the members of the executive branch or the regular U.S. Citizens or Nationals. The Senate exercised that right by creating ad-hoc investigative committees and using their power of subpoena to summon persons of interest or gather required documents from the U.S. Government. This oversight power, however, should not be confused with the impeachment procedure.

3.4 Impeachment Trials and Removal from Office

Article I, Section 5 of the United States Constitution grants each house of Congress the authority to establish its own procedural rules, punish members for disorderly conduct, and, with a two-thirds majority, expel a member. One form of discipline employed by the Senate is censure, also known as condemnation or denouncement. Censure is a formal expression of disapproval, issued through a resolution passed by a majority vote. Although the term "censure" is not explicitly mentioned in the Constitution and need not appear in the resolution, it serves as a formal reprimand. Importantly, censure does not remove a senator from office, nor does it strip the senator of their rights or privileges. Since 1789, the Senate has censured nine members for behavior deemed inappropriate or harmful to the Senate.[v]

Additionally, since 1789, the Senate has expelled 15 members, 14 of whom were removed during the Civil War for supporting the Confederacy. In several other instances, the Senate considered expulsion but ultimately did not proceed, often due to the member's departure from office. In these cases, corruption was frequently the primary issue under scrutiny.

The Constitution also empowers the House of Representatives with "the sole Power of Impeachment" (*Article I*, Section 2), while the Senate holds "the sole Power to try all Impeachments" (*Article I*, Section 3). A conviction in an impeachment trial requires a two-thirds majority of the senators present. The president, vice president, and all civil officers of the United States are subject to impeachment.[vi]

The process of impeachment, which originated in England and was adopted by American colonial and state governments, serves as a critical mechanism within the system of checks and balances. Through this process, Congress can charge and try federal officials for "Treason, Bribery, or other high Crimes and Misdemeanors." The Constitution does not define "high Crimes and Misdemeanors," and its interpretation has been a matter of ongoing debate.

Impeachment proceedings begin in the House of Representatives, where articles of impeachment are approved by a simple majority vote. Once the articles are transmitted to the Senate, the Senate assumes the role of a High Court of Impeachment, where it reviews evidence, hears testimony, and votes on whether to acquit or convict the accused official. A group of representatives, referred to as "managers," serve as prosecutors in the Senate trial. In the case of presidential impeachment, the Chief Justice of the United States presides over the trial. A two-thirds vote of the Senate is required to convict, resulting in the official's removal from office. In some cases, the Senate has further barred convicted officials from holding future public office. There is no process for appeal. Since 1789, approximately half of the

Senate's impeachment trials have led to convictions and the removal of the official from office.[vii]

3.5 Approval of Treaties

The United States Constitution grants the president the authority to make treaties "by and with the Advice and Consent of the Senate," provided two-thirds of the senators present agree (*Article II*, Section 2). Treaties are binding international agreements that become part of international law. When the United States enters into a treaty, it also gains the status of federal legislation, contributing to what the Constitution refers to as "the supreme Law of the Land."[viii]

The Senate itself does not ratify treaties. Instead, after the Senate Foreign Relations Committee reviews the treaty, the Senate votes to approve or reject a resolution of ratification. If the resolution is approved, formal ratification occurs when the instruments of ratification are exchanged between the United States and the foreign government(s) involved.

Historically, the Senate has approved the vast majority of treaties negotiated by the president and his representatives. However, in instances where Senate leadership believed a treaty lacked sufficient support for approval, the Senate has sometimes opted not to bring the treaty to a vote, leading to its withdrawal by the president. Treaties under review by the Senate Foreign Relations Committee do not need to be resubmitted at the start of a new Congress and can remain under consideration for extended periods.[ix]

In recent years, presidents have increasingly entered into international agreements without seeking Senate advice and consent. These agreements, known as "executive agreements," are not submitted to the Senate for approval but remain legally binding on the parties involved under international law.

3.6 Filibuster

Whether celebrated as a safeguard for political minorities against majority rule or criticized as a partisan obstructionist tool, the Senate's right to unlimited debate, including the filibuster, has long been a distinctive element of its role within the American political system.

The use of lengthy speeches to delay legislative action emerged during the Senate's first session. On September 22, 1789, Senator William Maclay of Pennsylvania recorded in his diary that the "Virginians...intended to talk away the time, preventing the bill's passage." As the use of filibusters increased during the 19th century, the Senate had no formal mechanism for a majority to end debate and compel a vote on legislation or nominations.[x]

While the practice of using extended debate was relatively rare before the 1830s, by mid-century, it had become common enough to earn the name "filibuster." The term, originally derived from the Dutch word for "freebooter" and the Spanish word "filibusteros" (referring to pirates raiding Caribbean islands), began to appear in American legislative discourse by the 1850s. On January 3, 1853, Mississippi Senator Albert Brown commented on a colleague's "filibustering," while North Carolina Senator George Badger complained of "filibustering speeches" just a month later, cementing the term in American political vocabulary.[xi]

These early filibusters sparked calls for what is now known as "cloture," a procedure to end debate and move to a vote. In 1841, Democratic senators attempted to delay a bill establishing a national bank, leading Whig Senator Henry Clay to propose a change to Senate rules to limit debate. In response, Alabama Senator William King warned of even longer filibusters if such changes were made, illustrating the deep division over the right to unlimited debate, which some viewed as a vital check on majority power.

By the late 19th and early 20th centuries, filibusters had become more frequent, prompting serious discussions about reforming Senate rules to limit the practice. As the Senate grew

larger and its workload increased, filibusters became an effective tactic to delay legislative progress and extract concessions from those eager to pass their bills.

In 1917, growing frustration—along with President Woodrow Wilson's urging—led the Senate to adopt Senate Rule 22, which allowed for cloture to be invoked with a two-thirds majority vote, thereby limiting debate. The rule was first tested in 1919 when cloture was invoked to end a filibuster against the Treaty of Versailles. Despite this rule, filibusters remained a potent tool, as achieving a two-thirds majority was challenging. Southern senators, in particular, used filibusters to block civil rights legislation, including anti-lynching bills. It was not until 1964 that the Senate successfully invoked cloture to pass a significant civil rights law.[xii]

As frustrations with the filibuster persisted, pressure to reform the cloture threshold grew. In 1975, the Senate reduced the required number of votes for cloture from two-thirds of those voting to three-fifths of all senators—60 of the 100 members. Although filibusters are still used in the Senate today, they now only apply to legislation, as the Senate in the 2010s adopted new precedents allowing a simple majority to end debate on nominations.

The type of filibuster most familiar to Americans involves lengthy speeches delivered by a small group of senators or even a single senator, such as the fictional filibuster in Frank Capra's 1939 film Mr. Smith Goes to Washington. Real-life examples also abound. In 1917, Senator Robert La Follette of Wisconsin used a filibuster to demand free speech during wartime. In the 1930s, Senator Huey P. Long of Louisiana employed the tactic to oppose bills he believed favored the wealthy over the poor. Senator Wayne Morse of Oregon famously filibustered in the 1950s to educate the public on national issues. The record for the longest individual filibuster speech belongs to Senator Strom Thurmond of South Carolina, who spoke for 24 hours and 18 minutes in opposition to the Civil Rights Act of 1957.[xiii]

4. Senate Leadership Roles

The U.S. Senate Leadership roles can be divided into two as the Leadership and Officers. As the Vice Presidency and President Pro Tempore are the only leadership roles mentioned by the Constitution, the other roles have been defined by the democratic history of the United States. Members of the Senate belonging to the two major political parties are organized into party conferences. The conferences (also referred to as caucuses) and their leaders play an important role in the daily functions of the Senate, including setting legislative agendas, organizing committees, and determining how action proceeds on the Senate floor. When senators represent third parties (examples include the Populist Party of the 1890s and the Farmer-Labor Party of the mid-to-late 20th century) or serve as Independents, they typically work within the two established party conferences to gain committee assignments or manage legislation.[xiv]

The framers of the Constitution did not envision the creation of political parties, but parties quickly emerged. In the 1790s, members of the Senate divided into two factions, one that supported President George Washington's administration, known as the Federalists, and one that opposed it, known as the Democratic Republicans. During the early 19th century, these original parties collapsed or fractured, and by the 1830s two national parties—the Whigs and the Democrats—had structured American political action down to the local level and influenced the election of U.S. Senators by state legislatures. When the Whig Party fell apart over the issue of slavery in the 1850s, the Republican Party was created, establishing the modern two-party system of Republicans and Democrats.

Party leadership emerged in the late 19th and early 20th centuries when both party conferences in the Senate elected leaders to speak for their members, coordinate action on the Senate floor, and work with the executive branch on policy priorities when in the same party as the president. To address their members' political and policy goals, the parties created

steering committees, campaign committees, and policy committees. By the 21st century, senators of both party conferences granted their leaders a great deal of control over the Senate's agenda.[xv]

4.1 Vice President

The Constitution names the Vice President of the United States as the president of the Senate. In addition to serving as presiding officer, the Vice President has the sole power to break a tie vote in the Senate and formally presides over the receiving and counting of electoral ballots cast in presidential elections.[xvi]

Today vice presidents serve as principal advisors to the president, but from 1789 until the 1950s their primary duty was to preside over the Senate. Since the 1830s, vice presidents have occupied offices near the Senate Chamber. Over the course of the nation's history, the vice president's influence evolved as vice presidents and senators experimented with, and at times vigorously debated, the role to be played by this constitutional officer.

4.2 President Pro Tempore

The Constitution instructs the Senate to choose a President Pro Tempore to preside over the Senate in the absence of the Vice President. Pro tempore is a Latin term meaning "for the time being," signaling that the position was originally conceived as a temporary replacement. The framers of the Constitution assumed that the vice president would preside over the Senate on a regular basis, so the Senate would only need to elect a President Pro Tempore to fill in as presiding officer for short periods of time.[xvii]

Although the Constitution does not specify who can serve as President Pro Tempore, the Senate has always elected one of its members to serve in this position. Since the mid-20th century, tradition has dictated that the senior member of the majority party serve as President Pro Tempore.

In addition to presiding over the Senate, the President Pro Tempore fulfills a number of other responsibilities. In consultation with Senate leaders, for example, the president pro tempore appoints the director of the Congressional Budget Office (jointly with the Speaker of the House), as well as Senate legislative and legal counsel. The President Pro Tempore also makes appointments to various national commissions and advisory boards and receives reports from certain government agencies.[xviii]

In the absence of the Vice President, the President Pro Tempore may administer all oaths required by the Constitution, may sign the legislation, may jointly preside with the Speaker of the House when the two houses sit together in joint sessions or joint meetings and may fulfill all other obligations of the presiding officer. Unlike the vice president, however, the president pro tempore cannot vote to break a tie in the Senate.

4.3 Senate Majority and Minority Leader

With each new Congress, the Democratic and Republican Conferences elect one of their members to serve as party leader. Depending on which party is in power, one party leader serves as the majority leader and the other as the minority leader. Both party leaders, also called floor leaders, serve as the spokespersons for their party's positions on the issues and coordinate their respective legislative strategies.[xix]

Working with the committee chairs and ranking members, the majority leader schedules business on the floor by calling bills from the calendar and keeps members of his or her caucus advised about the daily legislative program. In consultation with the minority leader, the majority leader fashions unanimous consent agreements by which the Senate may limit the amount of time for debate on a measure and divide that time between the parties.

Occupying the front-row desks on the center aisle in the Senate Chamber, the leaders pay close attention to floor action. They open and close the day's proceedings, keep

legislation moving, and protect the rights and interests of party members. When several senators are seeking recognition at the same time, the presiding officer of the Senate will call on the majority leader first, then on the minority leader, and then on the managers of the bill being debated. This right of first recognition enables the majority leader to offer amendments, substitutes, and motions to reconsider before any other senator.

The position of party floor leader is not included in the Constitution. It evolved gradually in the late 19th and early 20th centuries. The position developed separately within each of the major party conferences, with the conference chairs gradually assuming the functions associated with modern-day floor leaders well before the creation of the title itself. By the 1910s, both parties were electing conference chairs who acted as floor leaders, and by the 1920s, these leaders were exercising the full array of responsibilities associated with modern floor leadership.[xx]

4.4 Party Whips

Both party conferences in the Senate elect whips. The term "whip" comes from a fox-hunting expression "whipper-in" referring to the member of the hunting team responsible for keeping the dogs from straying from the team during a chase. Traditionally serving as assistant leaders, whips are mainly responsible for counting heads and rounding up party members for votes and quorum calls, and they occasionally stand in for the majority or minority leaders in their absence.[xxi]

II. INTRODUCTION TO THE AGENDA ITEM I: EVALUATING U.S. VOTING RIGHTS, ELECTION INTEGRITY, CAMPAIGN FINANCE REFORM AND PROTECTION FROM FOREIGN INTERFERENCE

1. Historical Overview of U.S. Voting Rights

1.1 Early Voting Laws and the Expansion of the Electorate

The right to vote—and who may exercise it—has changed continuously over the course of the United States' history. While states have traditionally determined requirements for voting, the federal government has taken several actions that have altered those requirements in an attempt to create more equity and equality in the process. Today, to vote in federal elections, one must be a United States citizen, at least 18 years old by the date of the general election, and a resident of the state in which one votes. However, these requirements used to be more restrictive.[xxii]

Following the American Revolution, the new country transitioned from a period of being under British rule to developing its government. After the failure of the Articles of Confederation, the country adopted the United States Constitution in 1787. *Article I* of the Constitution empowers state legislatures to oversee federal elections. Suffrage, or the right to vote, was granted exclusively to white, land-owning men. Since they were at such an early stage of the republic, the founders believed these men's economic ties to the country were valuable.[xxiii]

However, a growing number of men began to champion an expansion of suffrage during the early 1800s. Following a period that lacked political parties or choices for voters, the 1820s saw the return of a two-party political system, as well as a renewed interest in suffrage. White men continued to move West in search of available land, but many did not feel that ownership should be a requirement for voting. Many states removed that requirement, opening the door for complete white male suffrage.

While the country celebrated the expansion of voting rights for white men of all economic levels, the electorate still lacked diversity. Gender and race exclusions still restricted the ability of many citizens living within the United States to exercise the right to vote. Following the conclusion of the American Civil War in the 1860s, the Radical Republicans controlled Congress. These men were primarily white Northerners who wanted

to restrict the political power of the South following its rebellion against the U.S. federal government. As a result of the 13th Amendment, a large number of African Americans living in the South were freed from slavery, in addition to the many living in the North. Radical Republicans saw this as an opportunity not only to help their own cause but also to extend suffrage to African American men. In 1870, the 15th Amendment to the U.S. Constitution was ratified, declaring that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[xxiv]

The ratification of the 15th Amendment, which affirmed the right of African American men to vote, followed that of the 14th Amendment, which classified anyone born in the United States as a citizen. The 14th Amendment also granted "the equal protection of the laws" to all citizens. While this amendment became the basis for citizenship, along with the Indian Citizen Act of 1924 (this allowed Native Americans to vote but did not enforce the right; it would take 40 more years until all U.S. states granted full suffrage to Native Americans), it would also be cited more than any other in litigation. The 14th Amendment would also be at the center of the civil rights movement, which attempted to combat discrimination African Americans faced for nearly a century after its passage.[xxv]

African Americans faced Supreme Court challenges (Plessy v. Ferguson, 1896) that condoned separation of the races, as well as challenges at the polls. Having to pay a poll tax and pass a literacy test were just some examples of legalized state discrimination that African Americans faced in their attempts to exercise their right to vote. Many also faced threats of violence, lynching, and other scare tactics. It was not until the 1960s that the federal government more effectively protected their right to vote. After a series of speeches, sit-ins, and marches in Selma, Alabama, and other cities in the South, the 24th Amendment—which abolished poll taxes—and the Voting Rights Act of 1965 protected the right to vote for

African Americans and others. In the 2013 case *Shelby County v. Holder*, the Supreme Court weakened the Voting Rights Act. Specifically, the court struck down a section of the law that required states with a history of race-based voter discrimination to gain federal approval before changing their election rules.[xxvi]

Women were important supporters of the abolition movement in the mid-19th century, as they saw parallels with their own inequality during the period. A women's rights movement developed around the 1840s under the leadership of women such as Elizabeth Cady Stanton and Lucretia Mott. At the Seneca Falls Convention in 1848, they introduced the "Declaration of Sentiments," which included a revision to the Declaration of Independence, that "all men and women are created equal." While their attempts to achieve women's suffrage were unsuccessful at the time, they inspired future campaigners.[xxvii]

Wyoming was the first state to give women the right to vote in 1869, but it was not until 1920 that white women were granted the ability to vote nationwide. African American women continued to face obstacles to voting for many years following the 19th Amendment. The Progressive movement's reforms and women's work in industry during World War I helped drive support. The National American Woman Suffrage Association's constant protests, campaigning, and marches finally gained support from prominent politicians, such as President Woodrow Wilson, following the war. It was a catalyst that led more women to become involved in politics and government. Finally, the ratification of the 26th Amendment in 1971 lowered the voting age to 18, extending suffrage to more young adults.[xxviii]

1.2 Key Constitutional Amendments

- ***15th Amendment***

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Passed by Congress on February 26, 1869, and ratified on February 3, 1870, the 15th Amendment granted African American men the right to vote. To former abolitionists and to the Radical Republicans in Congress who fashioned Reconstruction after the Civil War, the 15th Amendment, enacted in 1870, appeared to signify the fulfillment of all promises to African Americans. [xxix]

African Americans exercised the right to vote and held office in many Southern states through the 1880s, but in the early 1890s, steps were taken to ensure subsequent "white supremacy." Literacy tests for the vote, "grandfather clauses" excluding from the franchise all whose ancestors had not voted in the 1860s, and other devices to disenfranchise African Americans were written into the laws of former Confederate states.

Social and economic segregation were added to Black America's loss of political power. In 1896, the Supreme Court decision *Plessy v. Ferguson* legalized "separate but equal" facilities for the races. For more than 50 years, the overwhelming majority of African American citizens were reduced to second-class citizenship under the "Jim Crow" segregation system. During that time, African Americans sought to secure their rights and improve their position through organizations such as the National Association for the Advancement of Colored People and the National Urban League and through the individual efforts of reformers like Booker T. Washington, W.E.B. DuBois, and A. Philip Randolph.[xxx]

- ***19th Amendment***

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Passed by Congress on June 4, 1919, and ratified on August 18, 1920, the 19th Amendment granted women the right to vote. The 19th Amendment legally guarantees American women the right to vote. Achieving this milestone required a lengthy and difficult struggle—victory took decades of agitation and protest. Beginning in the mid-19th century, several generations of woman suffrage supporters lectured, wrote, marched, lobbied, and practiced civil disobedience to achieve what many Americans considered a radical change in the Constitution. Few early supporters lived to see the final victory in 1920.[xxxi]

Beginning in the 1800s, women organized, petitioned, and picketed to win the right to vote, but it took them decades to accomplish their purpose. Between 1878, when the amendment was first introduced in Congress, and August 18, 1920, when it was ratified, champions of voting rights for women worked tirelessly, but strategies for achieving their goals varied. Some pursued a strategy of passing suffrage acts in each state—nine western states adopted woman suffrage legislation by 1912. Others challenged male-only voting laws in the courts. Some suffragists used more confrontational tactics such as picketing, silent vigils, and hunger strikes. Often supporters met fierce resistance. Opponents heckled, jailed, and sometimes physically abused them.[xxxii]

By 1916, almost all of the major suffrage organizations were united behind the goal of a constitutional amendment. When New York adopted woman suffrage in 1917 and President Wilson changed his position to support an amendment in 1918, the political balance began to shift.

On May 21, 1919, the House of Representatives passed the amendment, and 2 weeks later, the Senate followed. When Tennessee became the 36th state to ratify the amendment on August 18, 1920, the Amendment passed its final hurdle of obtaining the agreement of three-fourths of the states. Secretary of State Bainbridge Colby certified the ratification on August 26, 1920, changing the face of the American electorate forever.[xxxiii]

- ***24th Amendment***

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Amendment 24 to the Constitution was ratified on January 23, 1964. It abolished and forbade the federal and state governments from imposing taxes on voters during federal elections.

In the late 19th century –in the aftermath of the American Civil War and the subsequent Reconstruction Era– states across the former Confederacy imposed a series of laws that restricted the civil liberties of the newly-freed African American population. Although the Fifteenth Amendment granted the right to vote to all American men, African Americans in the South were met with several types of laws that restricted voting due to technicalities that ranged from arbitrary, to openly discriminatory. One of the many discriminatory methods was the poll tax, which required voters to pay a fee to enter the polling places to cast their ballots. Due to the disproportionate levels of poverty among African Americans in the Southern states, many of them – as well as poor Whites – were excluded from voting. The poll taxes and the other methods of restricting the vote were all made with discriminatory intent, but they were crafted in such a way as to avoid federal scrutiny. The 1937 Supreme Court case of *Breedlove v. Suttles* held that the poll taxes were constitutional.[xxxiv]

A more prominent wave of criticism towards the poll tax grew during the Roosevelt Administration of the 1930s and 1940s. President Harry S. Truman continued with these

criticisms in his President's Committee on Civil Rights, investigating the poll tax and other forms of voter restriction across the country. Anti-Communist sentiments that had emerged during the Second Red Scare of the 1950s shifted poll taxes to a lower political priority, and the issue would not be revisited until the administration of John F. Kennedy. An amendment to repeal all poll taxes was introduced by Congress in August 1962. In spite of concerns that all the Southern states would reject the amendment, the required thirty-eight states ratified it in January 1964. Among the states that approved the new amendment, Georgia unanimously voted in favor of it, while the only Southern state to directly reject it was Mississippi. In the immediate aftermath of the 24th Amendment's ratification, several states still maintained their poll taxes in opposition to the new law. These poll taxes were completely eliminated after the 1966 Supreme Court decision *Harper v. Virginia Board of Elections*, which ruled that poll taxes in all elections – federal, state, and local – were unconstitutional. The 24th Amendment was one additional step in the pursuit of civil rights in the turbulent 1960s. Coincidentally, the new amendment was passed the same year as the Civil Rights Act, which outlawed all forms of discrimination across the United States, effectively ending the Segregation-era. Just one year after the new amendment's ratification, the Voting Rights Act of 1965 eliminated all forms of discrimination in voting for all American men and women, making voting a Constitutional right with no reservations for the first time in American history. The 24th Amendment was instrumental in advancing the pursuit of voting rights, not just for the political movements that preceded it, but also as a foundation for those that would follow.[xxxv]

- ***26th Amendment***

  The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

In extending the Voting Rights Act of 1965 in 1970, Congress included a provision lowering the age qualification to vote in all elections, federal, state, and local, to eighteen. In a divided decision, the Supreme Court held that Congress was empowered to lower the age qualification in federal elections but voided the application of the provision in all other elections as beyond congressional power. Confronted thus with the possibility that they might have to maintain two sets of registration books and go to the expense of running separate election systems for federal elections and all other elections, the states were receptive to the proposal of an Amendment by Congress to establish a minimum age qualification at eighteen for all elections and ratified it promptly.[xxxvi]

1.3 Evolution of Election Integrity in the U.S.

In the early years of the United States, election integrity was primarily concerned with preventing fraud and ensuring that only eligible voters participated in the electoral process. The original Constitution did not prescribe specific election procedures, leaving the details largely to the individual states. This decentralized approach led to a variety of practices and, at times, to significant abuses such as voter intimidation and fraud. For instance, in the 19th century, many states employed techniques like voter registration challenges and literacy tests to disenfranchise marginalized groups.[xxxvii]

The late 19th and early 20th centuries saw pivotal reforms aimed at enhancing election integrity. The Progressive Era, in particular, was instrumental in addressing the issues of corruption and voter manipulation. Reforms such as the introduction of secret ballots, which replaced the publicly visible voting method, were designed to protect voters from coercion. Additionally, the 19th Amendment (1920) granted women the right to vote, significantly expanding the electorate and prompting further discussions about fair access to the polls.[xxxviii]

The Civil Rights Movement of the 1960s marked another transformative period for election integrity. Landmark legislation, including the Voting Rights Act of 1965, was enacted to combat racial discrimination and ensure that all citizens could exercise their right to vote. The Act prohibited literacy tests and other discriminatory practices that had been used to disenfranchise African American voters, marking a significant step towards achieving a more equitable electoral process.[xxxix]

The latter part of the 20th century and the early 21st century witnessed the advent of new technologies and their impact on election integrity. The use of electronic voting machines and computerized voter registration systems brought both opportunities and challenges. While these technologies have streamlined the voting process and improved efficiency, they have also introduced new vulnerabilities, such as concerns about hacking and technical malfunctions. As a result, there has been a growing emphasis on cybersecurity and the need for robust safeguards to protect the integrity of the electoral process.

In recent years, debates about election integrity have increasingly focused on issues such as voter ID laws, mail-in voting, and the accuracy of election results. These discussions often reflect broader political divides and have led to a heightened scrutiny of election practices. The introduction of voter ID laws in various states, for example, has sparked debates about balancing security with accessibility. Similarly, the expansion of mail-in voting options during the COVID-19 pandemic has raised questions about the reliability of these methods and their impact on election outcomes.[xl]

1.4 Federal vs. State Roles in Administering Elections

At the federal level, the U.S. Constitution and subsequent legislation establish a framework for overseeing the conduct of elections. The Constitution's Elections Clause grants Congress the authority to regulate the "Times, Places and Manner of holding Elections for

Senators and Representatives." This clause allows the federal government to enact laws that establish baseline requirements for federal elections. Key examples include the Voting Rights Act of 1965, which prohibits racial discrimination in voting, and the Help America Vote Act (HAVA) of 2002, which mandates minimum standards for voting systems, voter registration databases, and provisional ballots. These federal laws aim to protect voters' rights, ensure fair access to the ballot, and maintain the integrity of the election process. However, beyond these foundational regulations, the specifics of election administration are largely left to the states.[xli]

States play a central role in administering elections, a power derived from the Constitution's delegation of authority over "the Times, Places, and Manner of holding Elections" to state legislatures, except when Congress acts to regulate these areas. Each state has its own laws, regulations, and procedures governing various aspects of the electoral process, including voter registration, ballot design, early voting, absentee voting, and the certification of election results. States also have significant discretion in determining how to manage their election infrastructure, such as voting machines, polling places, and cybersecurity measures. This decentralization allows states to tailor their election processes to their unique demographics, political landscapes, and local needs. However, it also leads to significant variation in how elections are conducted across the country, which can affect voter experiences and outcomes.[xlii]

The interplay between federal and state roles in election administration can sometimes lead to tensions and conflicts. For example, when states implement laws or policies that potentially restrict voting access, such as strict voter ID requirements or purges of voter rolls, the federal government may intervene if these actions are perceived to violate federal protections against discrimination or disenfranchisement. Conversely, states often resist federal mandates that they perceive as overreach, arguing for their right to manage their own elections under the principle of states' rights. This push and pull between federal oversight

and state autonomy is an ongoing feature of American election administration, with each level of government seeking to balance the protection of voters' rights with the flexibility to innovate and respond to local circumstances.[xliii]

One of the challenges of this dual system is ensuring uniform standards of fairness and accessibility across all states while respecting the federalist principle of state sovereignty. The variation in election laws and practices can lead to disparities in voter access and turnout. For instance, some states may have extensive early voting periods and liberal absentee voting laws, while others may have more restrictive policies, resulting in different levels of voter participation and convenience. There have been calls for more standardized federal guidelines to reduce discrepancies and promote a more equitable electoral process. However, such proposals are often met with resistance from those who argue that states are better positioned to understand and address the needs of their residents.[xliv]

1.5 Significant Legislation and Court Cases

One of the earliest and most transformative pieces of legislation concerning voting rights was the Fifteenth Amendment, ratified in 1870. This amendment prohibited the federal government and states from denying a citizen the right to vote based on "race, color, or previous condition of servitude." Emerging from the ashes of the Civil War and the Reconstruction Era, the Fifteenth Amendment was a monumental step towards racial equality. However, its implementation faced significant resistance, particularly in the Southern states, where a variety of tactics—including literacy tests, poll taxes, and outright intimidation—were used to disenfranchise Black voters. Despite its promise, the Fifteenth Amendment was, for decades, undermined by state laws and practices that effectively nullified its intent.

The Voting Rights Act of 1965 (VRA) represents a watershed moment in the history of voting rights in the United States. Passed in response to the Civil Rights Movement's

tireless efforts and the violent opposition to Black voter registration in the South, the VRA sought to eliminate racial discrimination in voting. One of its most notable provisions was Section 5, which required certain states and localities with a history of discrimination to obtain federal approval before changing voting laws or practices. This "preclearance" requirement was instrumental in dismantling discriminatory barriers and significantly increased voter registration and participation among African Americans in the South. The Act's success was evident as it empowered the federal government to oversee elections in states that had a history of suppressing the Black vote, thus ensuring more equitable access to the ballot.[xlv]

Several landmark Supreme Court cases have also played pivotal roles in shaping voting rights. One such case is *Shelby County v. Holder* (2013), which effectively gutted the Voting Rights Act by declaring Section 4(b) unconstitutional. Section 4(b) contained the formula that determined which jurisdictions were subject to Section 5's preclearance requirements. The Court argued that the formula was outdated and did not reflect current voting conditions, thereby releasing numerous states and localities from federal oversight. This decision had profound implications, as it led to a resurgence of restrictive voting laws, such as voter ID requirements, and the reduction of early voting days, particularly in states that were previously covered under the VRA. Critics argue that the ruling undermined decades of progress toward voting equality and opened the door for new forms of voter suppression.[xlvi]

Another significant case is *Bush v. Gore* (2000), which involved the highly contested presidential election of that year. The Supreme Court's decision to halt the Florida recount, effectively awarding the presidency to George W. Bush, highlighted the complexities of voting laws and the potential for partisan manipulation of election procedures. While the case did not directly deal with voting rights in terms of disenfranchisement, it underscored the

critical importance of uniform voting standards and the potential for legal battles over voting processes to determine electoral outcomes. This case illuminated the need for reforms in election administration and raised awareness about the vulnerabilities in the U.S. electoral system.

The 26th Amendment, ratified in 1971, is another crucial piece of legislation in the evolution of voting rights. This amendment lowered the voting age from 21 to 18, a change largely driven by the argument that those old enough to be drafted for military service in the Vietnam War should also have the right to vote. This expansion of suffrage enfranchised millions of young Americans, reflecting the broader push for civil rights and equity in American society. It also marked a recognition that younger citizens had a significant stake in the nation's future and the democratic process.

In recent years, voting rights continue to be a contentious issue, with new legislation and court cases shaping the landscape. For instance, the Supreme Court's decision in *Brnovich v. Democratic National Committee* (2021) upheld Arizona's voting restrictions, which included policies that banned third-party ballot collection and out-of-precinct voting. The ruling was seen by some as a further weakening of the Voting Rights Act, specifically Section 2, which prohibits voting practices that discriminate based on race. This decision reflects a broader trend in the judiciary's narrowing interpretation of voter protections, raising concerns among voting rights advocates about the future of fair and equal access to the ballot box.[xlvii]

2. Current Landscape of U.S. Voting Rights

2.1 Voter ID Laws

Voter ID laws in the United States have become a deeply divisive and contentious issue in the realm of electoral politics. These laws require voters to present specific forms of

identification at the polls to cast their ballots. Proponents argue that such measures are necessary to prevent voter fraud and ensure the integrity of elections, while opponents view them as tools of disenfranchisement that disproportionately affect marginalized groups. The debate over voter ID laws involves not only questions of security and fairness but also broader issues of civil rights, access to democracy, and the balance between state and federal authority.[xlviii]

Advocates of voter ID laws contend that these measures are essential to safeguard the electoral process from fraud and maintain public confidence in the results. They argue that requiring identification is a common-sense precaution, much like needing an ID for boarding an airplane, buying alcohol, or even entering certain government buildings. From this perspective, voter ID laws are seen as a straightforward way to prevent potential abuses, such as impersonation at the polls or voting under a false identity. Supporters also claim that these laws promote uniformity and standardization in voting procedures across states, thereby reducing administrative confusion and inconsistencies.

However, opponents of voter ID laws argue that the threat of voter fraud is largely overstated and not supported by substantial evidence. Numerous studies have found that cases of in-person voter fraud—the type that voter ID laws are designed to prevent—are extremely rare in the United States. Critics assert that these laws are less about preventing fraud and more about restricting access to the ballot box, particularly for groups that tend to face more significant barriers to obtaining the required forms of ID. This includes low-income individuals, racial and ethnic minorities, the elderly, and people with disabilities. For these populations, obtaining a government-issued ID can involve navigating a complex and costly bureaucratic process, which effectively suppresses voter turnout and undermines the democratic principle of universal suffrage.[xlix]

The impact of voter ID laws on voter turnout and election outcomes has been a focal point of the debate. Several studies have shown that states with strict voter ID requirements tend to see lower voter turnout, particularly among minority groups and younger voters. This has led to accusations that such laws are a form of modern-day voter suppression, reminiscent of Jim Crow-era tactics aimed at disenfranchising African Americans. The effects can be particularly pronounced in close elections, where even a small reduction in turnout among certain demographic groups could sway the results. Consequently, opponents of voter ID laws argue that they compromise the representativeness and fairness of the democratic process.

The legal landscape surrounding voter ID laws is complex and continually evolving. Several states have passed laws with varying degrees of strictness, from photo ID requirements to broader forms of identification such as utility bills or bank statements. The constitutionality of these laws has been challenged in courts, with mixed outcomes. In some cases, courts have upheld voter ID laws, citing the states' interest in preventing voter fraud and ensuring orderly elections. In contrast, other rulings have struck down these laws as discriminatory and unconstitutional. The Supreme Court's decision in *Shelby County v. Holder* (2013), which weakened key provisions of the Voting Rights Act, further complicated the situation by giving states greater leeway to implement voter ID requirements without federal oversight.[1]

The debate over voter ID laws is not merely a legal or procedural issue; it is fundamentally about the nature of democracy and who gets to participate in it. At its core, the issue raises questions about the balance between securing elections and ensuring access to the ballot. While it is essential to maintain the integrity of elections, it is equally important to guarantee that all citizens, regardless of their socioeconomic status, have an equal opportunity to exercise their right to vote. This balance is particularly critical in a democracy that prides itself on inclusivity and equal representation.

2.2 Voting Rights Act of 1965

The passage of the Voting Rights Act was fueled by the tireless efforts of civil rights activists and the broader movement for racial justice. The early 1960s were marked by intense activism, with organizations like the Southern Christian Leadership Conference (SCLC) and the Student Nonviolent Coordinating Committee (SNCC) leading voter registration drives in the South. However, these efforts were often met with violent resistance, as exemplified by the events of "Bloody Sunday" in Selma, Alabama, in March 1965. During a peaceful protest march, state troopers brutally attacked demonstrators who were advocating for voting rights. The shocking images of the violence galvanized public opinion and created a sense of urgency among lawmakers, compelling President Lyndon B. Johnson to push for comprehensive voting rights legislation. His famous speech to Congress, where he declared, "We shall overcome," underscored the moral imperative of the moment and laid the groundwork for the Act's passage.[li]

One of its most crucial provisions was the suspension of literacy tests, which were notoriously used to disenfranchise Black voters. These tests were administered subjectively, with impossible questions or unfair requirements that White voters were not subjected to. Furthermore, the Act authorized the federal government to oversee voter registration and election procedures in jurisdictions with a history of discrimination. This oversight, known as "preclearance," required states and localities with significant histories of voting discrimination to obtain federal approval before making any changes to their voting laws or practices. By placing the power of enforcement in the hands of the federal government, the Act significantly curtailed the ability of state and local governments to impose discriminatory practices.[lii]

The impact of the Voting Rights Act was profound and immediate. Within a year of its passage, hundreds of thousands of African Americans were registered to vote, and the number

continued to grow in the following years. The Act also facilitated the election of Black officials at the local, state, and federal levels, which was crucial for ensuring that African American communities had representation and a voice in government. The Voting Rights Act fundamentally altered the political landscape of the United States by breaking down the institutional barriers that had prevented African Americans and other minorities from participating fully in the democratic process. It also set a precedent for further civil rights advancements, reinforcing the federal government's role in protecting the rights of marginalized communities.[liii]

However, the Voting Rights Act has faced significant challenges and evolving interpretations since its enactment. In recent years, the Act's effectiveness has been undermined by key Supreme Court decisions, such as the 2013 case of *Shelby County v. Holder*. In this decision, the Court struck down the coverage formula that determined which jurisdictions required federal oversight under the Act, arguing that it was based on outdated data. This ruling effectively gutted the preclearance provision and led to a resurgence of state-level voting restrictions, including voter ID laws, reductions in early voting, and purging of voter rolls, which have been criticized as efforts to disenfranchise minority voters. The rollback of these protections has sparked renewed debates about the ongoing need for robust federal oversight to safeguard voting rights in the United States.[liv]

2.3 Voting Rights of Marginalized Groups

From the inception of the United States, voting was primarily a privilege of white male landowners. Women, African Americans, Native Americans, and other minorities were systematically excluded. Despite the 15th Amendment, various marginalized groups faced legal and physical barriers that made voting nearly impossible.[lv]

The fight for women's suffrage was another critical chapter in the struggle for voting rights. Women in the U.S. were largely excluded from the electoral process until the early 20th century. The suffrage movement, which began in earnest in the mid-19th century, culminated in the ratification of the 19th Amendment in 1920, granting women the right to vote. However, the 19th Amendment primarily benefited white women, as African American women and other women of color continued to face discriminatory practices at the polls. The intersectionality of race and gender meant that many women of color did not experience full voting rights until the Civil Rights Movement of the 1960s, which addressed broader racial injustices.[lvi]

The Civil Rights Movement of the 1950s and 1960s played a pivotal role in dismantling legal barriers to voting. Landmark legislation such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965 was enacted to combat racial discrimination and enforce voting rights for all citizens, regardless of race or ethnicity. The Voting Rights Act, in particular, was a watershed moment as it prohibited discriminatory voting practices and provided for federal oversight of voter registration in areas where such practices were prevalent. It led to a significant increase in voter registration and participation among African Americans and other marginalized groups.

The disenfranchisement of formerly incarcerated individuals continues to be a critical issue. Felony disenfranchisement laws, which vary widely by state, disproportionately impact African Americans and other minorities, effectively silencing millions of potential voters. Although some states have reformed these laws to restore voting rights, significant barriers remain. The ongoing debate around these laws reflects broader issues of racial inequality and the enduring legacy of systemic discrimination within the American political system.[lvii]

3. Election Integrity and Security

One of the primary safeguards against election fraud in the United States is the rigorous voter registration process. States have implemented various procedures to ensure that only eligible citizens are allowed to vote. This often includes verifying a voter's identity through government-issued identification, proof of residency, and confirmation of citizenship. Some states also utilize online voter registration systems that cross-reference personal information against existing government databases to prevent duplicate or ineligible registrations. Additionally, states maintain voter rolls, which are periodically updated to remove deceased individuals, those who have moved out of state, or those otherwise ineligible. These measures reduce the risk of ineligible individuals casting a ballot and help maintain the accuracy and integrity of voter lists.[lviii]

Another crucial safeguard is the use of secure voting systems and technologies. In recent years, concerns about the potential for tampering with electronic voting machines have led to heightened security measures. Many states have transitioned to paper-based voting systems or systems with a verifiable paper trail. This allows for a more transparent and secure voting process, as paper ballots can be audited and recounted in the event of a dispute. Additionally, stringent certification and testing processes are conducted for all voting equipment to ensure it meets federal and state standards for security and reliability. Furthermore, many states have implemented risk-limiting audits, which are statistically designed to confirm that election outcomes are accurate and have not been manipulated. These audits provide an additional layer of verification that the election results reflect the will of the voters.[lix]

Poll worker training and oversight are also integral to preventing election fraud. Poll workers, who play a critical role in managing polling places and ensuring the voting process runs smoothly, receive training on how to handle various situations that could lead to fraud, such as attempts at voter impersonation or multiple voting. They are also instructed on proper protocols for checking voter identification, handling ballots, and managing voting machines.

To enhance oversight, bipartisan teams often monitor polling places, and states implement measures to ensure transparency in the election process. The presence of trained observers from political parties, non-partisan organizations, and international bodies can deter potential fraud and provide assurance to the public that the election is being conducted fairly.[lx]

Mail-in voting, increasingly popular in recent years, especially during the COVID-19 pandemic, has its own set of safeguards to prevent fraud. While mail-in voting expands access to voting, it also presents unique challenges. To mitigate risks, states employ a variety of security measures, such as signature verification, barcodes to track ballots, secure drop boxes, and strict deadlines for receiving and counting ballots. Some states also require voters to provide additional identification information, such as a driver's license number or the last four digits of their Social Security number, when requesting an absentee ballot. Election officials are trained to scrutinize ballots for authenticity and reject those that show signs of tampering or do not meet the established criteria.[lxi]

Federal and state laws play a vital role in deterring and punishing election fraud. The United States has a robust legal framework that criminalizes various forms of election fraud, including voter impersonation, ballot stuffing, and tampering with voting machines. Violations can lead to severe penalties, including fines and imprisonment, which serve as a strong deterrent. The Department of Justice, along with state and local law enforcement agencies, is tasked with investigating and prosecuting election-related crimes. Additionally, the Federal Election Commission (FEC) and state election boards have oversight authority to ensure compliance with election laws and regulations. The presence of these legal frameworks and enforcement agencies underscores the seriousness with which the U.S. approaches the issue of election fraud.

Public transparency and accountability also serve as significant safeguards against election fraud. Many states have adopted measures to increase transparency in the electoral

process, such as publishing detailed election results, allowing public observation of the vote-counting process, and providing mechanisms for reporting and investigating alleged fraud. Media organizations and independent watchdog groups play a critical role in monitoring elections and reporting irregularities, further contributing to an open and accountable electoral system. The availability of information and the active involvement of civil society in scrutinizing elections create an environment where fraudulent activities are more likely to be detected and addressed.[lxii]

4. Campaign Finance Reform

Campaign finance reform is a critical issue in the United States' political landscape, addressing the way political campaigns are funded and how these funds influence electoral outcomes. The reform debate centers on balancing the need for free speech, as protected by the First Amendment, with ensuring a fair democratic process that limits undue influence from wealthy individuals, corporations, and special interest groups. Over the years, the United States has seen various efforts to reform campaign finance laws, ranging from the Federal Election Campaign Act of 1971 to the landmark Citizens United v. Federal Election Commission ruling in 2010. Each of these reforms has significantly shaped the landscape of American politics, impacting how campaigns are conducted and how democracy functions in the country.[lxiii]

The Federal Election Campaign Act (FECA) of 1971 was one of the earliest significant efforts to regulate campaign finance in the United States. It aimed to increase transparency by requiring full disclosure of campaign contributions and expenditures. FECA also introduced limits on contributions to federal candidates and political parties, as well as spending limits for presidential campaigns, which were publicly funded. These measures were intended to curb the influence of money in politics and prevent corruption. However, the Act faced challenges in its enforcement and effectiveness, leading to further amendments

in 1974 that established the Federal Election Commission (FEC) as an independent regulatory agency to enforce campaign finance laws.[lxiv]

Despite the intent of FECA and the creation of the FEC, loopholes and legal challenges emerged over time, complicating the campaign finance landscape. One of the most significant developments came in 1976 with the Supreme Court case *Buckley v. Valeo*, which struck down several provisions of FECA. The Court ruled that spending money to influence elections is a form of constitutionally protected free speech, thereby removing limits on independent expenditures by individuals and groups that are not coordinated with a candidate's campaign. This decision marked a critical turning point, reinforcing the principle that political spending is a form of speech while also highlighting the tension between free speech and the need for regulation to prevent corruption.[lxv]

The turn of the 21st century saw renewed calls for campaign finance reform, culminating in the Bipartisan Campaign Reform Act (BCRA) of 2002, also known as the McCain-Feingold Act. The BCRA aimed to address the proliferation of "soft money" funds raised by political parties that were not subject to federal limits and were often used for "party-building" activities that indirectly supported candidates. The Act banned national parties from raising or spending soft money and placed restrictions on "electioneering communications," ads that mention a candidate close to an election but are funded independently of a campaign. The BCRA was a response to growing public concern over the outsized influence of money in politics and the potential for corruption and inequality in the democratic process.[lxvi]

However, the 2010 Supreme Court decision in *Citizens United v. FEC* significantly altered the campaign finance landscape once again. The Court ruled that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment, essentially allowing corporations and unions to spend unlimited amounts on

political advocacy as long as it is independent of a candidate's campaign. This decision led to the rise of Super Political Action Committees (Super PACs), which can raise and spend unlimited amounts of money from individuals, corporations, and unions to advocate for or against political candidates. The Citizens United ruling has been highly controversial, with proponents arguing that it upholds free speech rights, while critics contend that it exacerbates the influence of money in politics, undermining democratic equality and giving disproportionate power to wealthy donors.[lxvii]

The post-Citizens United era has sparked an ongoing debate about the need for further campaign finance reforms. Critics argue that the current system allows a small group of wealthy donors to wield disproportionate influence over elections and policy decisions, undermining the principle of one person, one vote. Proposals for reform have included overturning Citizens United through a constitutional amendment, increasing transparency around political donations through stronger disclosure laws, and introducing public financing for campaigns to reduce candidates' dependence on large private donors. Public opinion polls consistently show strong support for these measures, reflecting a widespread concern about the integrity of American democracy.[lxviii]

Despite the clear need for reform, achieving meaningful changes in campaign finance law remains a daunting challenge. The First Amendment protections of free speech present a significant legal barrier to many proposed reforms, and the political gridlock in Congress makes passing comprehensive legislation difficult. Additionally, the FEC, the body responsible for enforcing campaign finance laws, is often criticized for its lack of enforcement power and partisan deadlock, rendering it ineffective in curbing abuses. These challenges highlight the complex interplay between law, politics, and money in American governance, illustrating that campaign finance reform is not only a legal issue but also a deeply political one.

5. Protection from Foreign Interference

In democratic societies like the United States, the integrity of the voting system is paramount to ensuring fair representation and maintaining public trust in the government. One of the critical aspects of this integrity is the protection of the voting system from foreign interference. Foreign interference, in this context, refers to any attempt by a foreign government, organization, or individual to manipulate or disrupt the electoral process to influence the outcome of an election. This interference poses a significant threat to national sovereignty and the democratic process, undermining the will of the people and potentially skewing policy decisions in favor of foreign interests. Thus, safeguarding the U.S. voting system from such interference is essential for the preservation of democracy and the rule of law.[lxix]

Historically, foreign interference in U.S. elections has taken various forms, ranging from disinformation campaigns to direct cyber-attacks on election infrastructure. One of the most notable examples occurred during the 2016 U.S. presidential election when Russian operatives allegedly conducted a coordinated campaign to influence the election's outcome. This campaign included hacking into political party servers, stealing sensitive information, and strategically leaking it to sway public opinion. Moreover, the spread of fake news and misinformation on social media platforms created confusion among voters and polarized the electorate. These tactics highlighted the vulnerabilities of both digital infrastructure and public opinion in the age of information warfare. The U.S. government and private sector have since recognized the urgent need to address these vulnerabilities to protect future elections from similar threats.[lxx]

To counter foreign interference, the U.S. has adopted a multi-pronged approach involving legislation, technological advancements, and international cooperation. The government has passed laws such as the "Honest Ads Act," which aims to increase

transparency in online political advertising by requiring digital platforms to disclose the purchasers of political ads. Additionally, the "Defending Elections from Threats by Establishing Redlines (DETER) Act" seeks to deter foreign actors by imposing sanctions on countries that interfere in U.S. elections. These legislative efforts are complemented by technological measures to secure the voting infrastructure. For example, the Department of Homeland Security (DHS) has classified election systems as critical infrastructure, leading to increased federal support for state and local election officials in securing voter databases, voting machines, and communication networks against cyber-attacks. The collaboration between federal, state, and local governments is crucial to building a robust defense mechanism that can adapt to evolving threats.[lxxi]

However, the complexity of protecting the U.S. voting system from foreign interference goes beyond just legal and technological measures. It also requires active public awareness and education to build resilience against disinformation campaigns. Foreign interference often relies on exploiting social divisions and amplifying misleading narratives to create discord among voters. In response, public and private entities have launched initiatives to promote media literacy and critical thinking skills, enabling citizens to better discern credible information from false or manipulated content. Social media companies, under pressure from both the government and the public, have also taken steps to detect and remove fake accounts and foreign propaganda. Nonetheless, the challenge remains substantial, as adversaries continually adapt their tactics to bypass these defenses.[lxxii]

International cooperation is another critical component in the fight against foreign interference. Elections are not just national events but also points of interest for various global actors who might seek to influence the geopolitical landscape. As such, the U.S. collaborates with allies to share intelligence on potential threats, coordinate defensive measures, and establish norms for responsible state behavior in cyberspace. For example, the

Five Eyes intelligence alliance, comprising the United States, the United Kingdom, Canada, Australia, and New Zealand, provides a platform for intelligence-sharing and joint efforts to counter foreign influence operations.

III. INTRODUCTION TO THE AGENDA ITEM II: INSIDER TRADING IN THE U.S.

1. Introduction to the Agenda Item II: Insider Trading in the US

1.1 Definition and Overview of Insider Trading

1.1.1 Legal Definition of Insider Trading

Insider trading refers to the buying or selling of a publicly traded company's stock by someone who has non-public, material information about that company. This practice is illegal when it involves a breach of fiduciary duty or other relationship of trust and confidence, and the information is material and non-public.

Material information is any information that could significantly impact an investor's decision to buy or sell the security. Non-public information is information that has not been legally made available to the public.

Insider trading can be both legal and illegal depending on when the insider makes the trade. It is legal if the insider trades stock and properly reports the trades to The U.S. Securities and Exchange Commission (SEC). However, it becomes illegal when the material information is still non-public, and the insider uses it for their financial advantage, thereby breaching their fiduciary duty. SEC actively monitors and enforces laws against illegal insider trading to maintain a fair marketplace.[lxxiii]

1.1.1.1 The Securities Exchange Act of 1934

The Securities Exchange Act of 1934 is a seminal work of American legislation that regulates trading on the secondary market in securities (stocks and bonds). On June 6, 1934, during the Great Depression, this act was passed in reaction to the 1929 stock market crash and that followed financial instability. Also one of the most important outcomes of the Act was the creation of SEC.[lxxiv]

The U.S. financial markets have been greatly affected by the Securities Exchange Act of 1934. It has contributed to market stabilisation and investor confidence restoration by advancing justice and transparency. The SEC continues to remain essential to preserving the integrity of the securities markets and safeguarding investors against misbehaviour and fraud.

Most importantly for our agenda, The Securities Exchange Act of 1934, particularly Section 10(b) of the Act, which forbids the use of any manipulative or deceptive device in connection with the purchase or sale of any security, serves as the cornerstone of insider trading legislation in the United States. It is illegal for anyone to participate in any act or omission that would function as a fraud or deceit in connection with the purchase or sale of any security, whether directly or indirectly, according to Rule 10b-5, which was established under this section.

Section 10(b): *It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and*

regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

This section is a key anti-fraud provision that aims to prevent deceptive practices in the securities markets. The SEC enforces this provision primarily through Rule 10b-5, which prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security.[lxxv]

***Rule 10b-5**: Employment of Manipulative and Deceptive Devices*

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a) To employ any device, scheme, or artifice to defraud,

b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

1.1.1.2 Legal Insider Trading

When corporate insiders—officers, directors, and employees—purchase or sell stock in their own companies, it's known as legal insider trading. As long as this kind of trading complies with the SEC's regulations—especially those pertaining to trade reporting—it is

acceptable. Insiders must submit reports of their trades using forms like Form 4, usually within two business days.

1.1.1.3 Example of Legal Insider Trading

A corporate officer buys shares in their own company on the open market, following the disclosure of the company's quarterly earnings. Because the information about the earnings is public, the officer's trade is legal as long as they report the transaction within the required timeframe.

1.1.1.4 Illegal Insider Trading

When someone purchases or sells an investment while in the control of significant, confidential information about the security, it's known as illegal insider trading. Any information that could affect an investor's choice to purchase or sell a security is referred to as "material information". Information is considered "non-public" if it hasn't been made public and hasn't yet been reflected in the price of the stock.

"Tipping," in which an insider provides significant, non-public information to a third party (a "tippee"), who afterwards trades on the information, is another form of illegal insider trading. It is possible to hold responsible both the insider (tipper) and the recipient of the information (tippee).[lxxvi]

1.1.1.5 Example of Illegal Insider Trading

A corporate executive, aware of an upcoming merger that has not yet been announced to the public, purchases a large number of shares in their company, anticipating a rise in stock

value once the merger is announced. This trade is illegal because it is based on non-public, material information.

1.1.1.6 Consequences of Illegal Insider Trading

Participating in illegal insider trading may have severe consequences. If found guilty of insider trading, a person may be subject to jail time, fines, and profit disgorgement, among other civil and criminal penalties. The purpose of the SEC's aggressive pursuit of insider trading cases is to maintain honest and open markets. These are some of the important penalties and repercussions:

Fines: Individuals convicted of insider trading can face fines of up to $5 million12. For corporations, the fines can be even higher.

Imprisonment: Those found guilty may be sentenced to up to 20 years in prison12.

Disgorgement: Offenders are often required to disgorge (return) any profits gained from the illegal trading, along with interest1.

Bans and Restrictions: Convicted individuals may be banned from serving as officers or directors of public companies1.

Reputational Damage: Beyond legal penalties, individuals and companies involved in insider trading can suffer significant damage to their reputations, which can impact future business opportunities and relationships.

1.1.2 Key Concepts

In order to learn insider trading effectively, it would be helpful to harness important concepts that from the basis of the legal and ethical framework surrounding this practise.

Material Non-Public Information (MNPI), fiduciary duty, and the dynamics of tipping and tippees can be given as an example for these concepts.

1.1.2.1 Material Non-Public Information (MNPI)

Material Non-Public Information refers to any information that could reasonably be expected to affect the price of a security and has not yet been made available to the general public. For information to be considered "material," it must be significant enough that its disclosure would likely influence an investor's decision to buy or sell a security.

Materiality:

The materiality of information is judged by its potential impact on the stock's price. Examples of material information include earnings reports, significant corporate transactions (like mergers or acquisitions), major product launches, or changes in executive leadership.

Suitable example would be that: if a company is in negotiations for a merger that will likely double its stock price, this information is considered material because it would significantly affect an investor's decision to trade the company's shares.

Non-Public Information:

Information is non-public until it has been disseminated broadly to the public, such as through a press release, SEC filing, or other means that ensure the information is accessible to all investors simultaneously. Information that is only known within a company or by a select group of individuals is considered non-public.

Suitable example would be that: an internal memo regarding an unannounced product recall within a company constitutes non-public information until it is officially disclosed to the public through a press release or SEC filing.

Trading on MNPI is illegal because it gives the insider an unfair advantage over the general public, abuses the principles of fairness and transparency that are crucial to the integrity of the financial markets.[lxxvii]

1.1.2.2 Fiduciary Duty

Insiders have a duty of trust and confidence to both the company and its shareholders, which is known as fiduciary duty. Corporate insiders, including executives, directors, and staff, have an obligation to act in the company's and its shareholders' best interests.

Violation of Fiduciary Duty:

Insiders violate this fiduciary duty when they utilise MNPI for their own benefit. Information misuse damages the business and undermines confidence in the financial markets.

Suitable example would be that a CEO who learns of an upcoming negative earnings report and sells their shares before the information is made public is breaching their fiduciary duty by prioritizing personal gain over the interests of the company and its shareholders.

Constructive Insiders:

In certain circumstances, people who are not workers of the company but have a connection to it that allows them to access MNPI—such as consultants, accountants, or lawyers—are also thought to have a fiduciary duty.

Suitable example would be that: a lawyer working on a confidential merger for a client company would have a fiduciary duty to keep that information confidential and not use it for personal trading purposes.

Insider trading cases involving breaches of fiduciary duty may result in harsh punishments such as fines, profit disgorgement, and jail time. In addition, individuals who violate their fiduciary duties may face civil and criminal prosecutions from the SEC and DOJ.

1.1.2.3 Tipping and Tipees

When an insider (the "tipper") shares MNPI to a second party (the "tippee"), who eventually trades on the information, this is known as tipping. If certain requirements are satisfied, insider trading charges may be brought against both the tipper and the tippee.

The Tipper:

Usually, the tipper is an insider who tells someone outside the company about MNPI. Whether the tipper benefited personally from leaving the tip is the main factor in assessing their liability. This benefit to oneself could be material—like money or presents—or immaterial—like a positive reputation or the fulfilment that comes from supporting a friend or relative.

Suitable example for that could be: a corporate executive tips a friend about an upcoming earnings report in exchange for a favor. The executive benefits from the favor and is therefore liable for insider trading.

The Tippee:

The individual who trades on the MNPI after receiving it from the tipper is known as the tippee. It is necessary for the tippee to know—or should have known—that the information they received was MNPI and that the tipper's fiduciary duty was broken in order for them to be held accountable.

Suitable example for that could be: a stockbroker receives a tip about a pending merger from a friend who works at the company. If the stockbroker knows the information is non-public and trades on it, they can be held liable for insider trading.

Chain of Liability:

The original tippee may not be the end of the chain of liability. The people who know or should have known that the information was obtained in violation of a fiduciary duty may also be held accountable if the tippee shares it with secondary tippees who trade on it.

Depending on the seriousness of the infraction and the volume of trading activity based on the tipped information, both tippers and tippees may be subject to civil and criminal charges, which may include significant fines and jail time.

1.3 Practical Examples

In order to better understand the concepts we mentioned so far and to better understand how insider trading laws apply in real-world situations, it’s helpful to examine practical examples that illustrate both legal and illegal insider trading scenarios. These

examples demonstrate how the concepts of Material Non-Public Information (MNPI), fiduciary duty, and tipping are applied in actual cases.

1.1.3.1 Scenario I: Executives Trading After Public Disclosure

Yağız Patır is the Chief Financial Officer (CFO) of MUN Corporation, a publicly traded company. On April 1st, MUN Corporation publicly announces its quarterly earnings, showing a significant increase in profits compared to the previous quarter. Following this announcement, on April 3rd, Yağız Patır decides to purchase additional shares of MUN Corporation on the open market.

- **Legal Justification:** In this scenario, Yağız Patır's trading activity is legal because it occurred after the company's earnings information was made public. Since the information was disclosed to the public through a press release and other regulatory filings, it is no longer considered non-public. Furthermore, Yağız Patır properly reports his purchase to the SEC within the required timeframe, ensuring full transparency.
- **Reporting Requirements:** Yağız Patır must file a Form 4 with the SEC within two business days of his trade, disclosing his purchase to the public. This filing is part of the SEC's effort to promote transparency and allow investors to see when company insiders are buying or selling their own company's stock.
- **Impact:** Legal insider trading like this is a common practice among corporate executives, as long as it is done within the confines of the law. It is important to note that these trades must occur during an open trading window, a designated period after significant company information has been publicly disclosed, and must comply with all SEC regulations.

1.1.3.2 Scenario II: Trading on Non-Public Merger Information

Sarina Fidan is a senior executive at Beştepe Corp, which is in the final stages of negotiating a merger with a competitor, Gazi Corp. This merger, which has not yet been announced to the public, is expected to significantly increase Beştepe Corp's stock price. On March 15th, Sarina, aware of the imminent merger, decides to purchase a large number of Beştepe Corp shares before the merger is publicly announced.

- **Illegal Action:** Sarina's actions constitute illegal insider trading because she is trading on material non-public information. The upcoming merger is both material (as it is likely to significantly affect the stock price) and non-public (as it has not yet been disclosed to the market). By purchasing shares with this knowledge, Sarina is exploiting her position as an insider for personal gain, which breaches her fiduciary duty to Beştepe Corp and its shareholders.
- **Consequences:** If discovered, Sarina could face serious legal consequences. The SEC could impose civil penalties, including the disgorgement of profits made from the illegal trades, and she could also face criminal charges that carry potential fines and imprisonment. Furthermore, Beştepe Corp could be subjected to reputational damage and legal scrutiny.
- **Precedent:** This scenario is similar to the case of Rajat Gupta, a former board member of Goldman Sachs, who was convicted of insider trading for tipping hedge fund manager Raj Rajaratnam about confidential information regarding Goldman Sachs' financial decisions. Gupta was found guilty and sentenced to prison, illustrating the severe consequences of such actions.

1.1.3.3 Scenario III: Insider Tipping a Friend

Bora Bulan, an executive at a major technology firm, learns that his company is about to announce a breakthrough in a new product that will revolutionize the industry. Before the

news is made public, Bora tells his friend, Aydıner, about the upcoming announcement. Aydıner, aware that the information is non-public and likely to affect the stock price, buys a large number of shares in the company.

- **Tipping Liability:** Bora, as the tipper, has violated his fiduciary duty by disclosing MNPI to Aydıner. The fact that he received no tangible benefit from tipping his friend is irrelevant in some cases; the mere act of sharing the information in breach of his duty can constitute illegal insider trading. However, courts often look for evidence of some personal benefit to the tipper, even if it's intangible (such as maintaining a friendship).
- **Tippee Liability:** Aydıner, the tippee, is also liable for insider trading because he acted on MNPI knowing that it was provided by an insider in breach of a fiduciary duty. The law holds that tippees can be as culpable as the insiders themselves, particularly if they knowingly exploit the information for financial gain.
- **Legal Precedent:** A similar situation occurred in the case of United States v. Newman (2015), where the court emphasized the necessity of proving that the tippee knew the information was non-public and that the tipper received a benefit. This ruling highlighted the complexity of prosecuting tippee cases, though it did not eliminate the liability of tippees under insider trading laws.

1.1.3.4 Real-Life Case Study: The Martha Stewart Case

Martha Stewart, a prominent businesswoman and media personality, became embroiled in an insider trading scandal in 2001 involving the stock of a biopharmaceutical company, ImClone Systems.

- **Scenario:** Stewart received a tip from her broker, Peter Bacanovic, who learned that ImClone's CEO, Samuel Waksal, was attempting to sell his shares before the public announcement that the FDA had rejected ImClone's application for a new cancer drug. Acting on this tip, Stewart sold her shares in ImClone, avoiding a significant loss.
- **Legal Outcome:** Although Stewart was not charged with insider trading, she was charged with and convicted of obstruction of justice and making false statements to federal investigators. The case became a high-profile example of the serious consequences of actions related to insider trading, even for those not directly charged with the trading itself.
- **Impact:** Stewart served five months in prison and paid a substantial fine. The case underscored the importance of transparency and the legal risks associated with acting on non-public information, even indirectly.

1.2 Historical Cases and Precedents

1.2.1 Landmark Cases

A number of precedent-setting cases that have shaped the legal landscape of insider trading in the United States have an impact on the enforcement of insider trading laws and the public's understanding of this complex area of securities regulation. The following is a list of the most important cases that have influenced insider trading legislation.

1.2.1.1 The Case of Ivan Boesky (1986)

Background:

Ivan Boesky was a well-known stock trader and financier on Wall Street who rose to popularity in the 1980s insider trading scandal. Insider trading was brought to the public's attention by Boesky's case, which also had a major impact on the criminal investigation of insider trading.

- **The Scheme:** Boesky made millions of dollars by trading on insider information that he obtained through a network of corporate insiders and other traders. He specialized in merger arbitrage, where he would buy stock in companies that were targets of takeover bids, based on tips he received before the deals were made public.
- **Legal Outcome:** Boesky was charged with securities fraud in 1986. To avoid a lengthy prison sentence, he cooperated with authorities, providing information that led to the prosecution of other high-profile figures, including Michael Milken, the "junk bond king." Boesky was sentenced to three years in prison, fined $100 million, and barred from the securities industry.
- **Impact:** The Boesky scandal sparked legislative changes targeted at strengthening securities laws and enforcement as well as raising public awareness of insider trading. A chilling effect that the case had on Wall Street was that traders started to be cautious of doing anything that might be understood as insider trading.[lxxviii]

1.2.1.2 The Martha Stewart Case (2004)

Background:

During the early 2000s, Martha Stewart, a well-known media mogul and the creator of Martha Stewart Living Omnimedia, was involved in an insider trading scandal. Because of her prominent position, her case received a lot of media attention and brought up significant issues regarding the application of insider trading laws. (Even though we covered this previously just read it again :))

- **The Incident:** In December 2001, Stewart sold nearly 4,000 shares of ImClone Systems, a biopharmaceutical company, just before the public announcement that the FDA had rejected ImClone's application for a new cancer drug. The tip to sell her shares came from her broker, Peter Bacanovic, who had learned that ImClone's CEO, Samuel Waksal, was selling his shares in anticipation of the negative news.

- **Legal Outcome:** While Stewart was not convicted of insider trading per se, she was found guilty of obstructing justice and making false statements to federal investigators. In 2004, she was sentenced to five months in federal prison, five months of home confinement, and fined $30,000.
- **Impact:** Even for those who were not directly involved in trading on inside information, Stewart's case demonstrated the serious legal and reputational consequences of actions related to insider trading. The case also demonstrated how crucial honesty and openness are when interacting with regulatory bodies.

1.2.1.3 ***The United States v. Newman (2015)***(Important)

Background:

The case of United States v. Todd Newman was a pivotal moment in insider trading law, particularly in how it defined the liability of tippees—those who receive and act on inside information.[lxxix]

- **The Incident:** Todd Newman and Anthony Chiasson, two hedge fund managers, were convicted of insider trading after receiving non-public information about the earnings of several technology companies. The information had been passed through multiple levels of tippers before reaching them.
- **Legal Outcome:** In a surprising turn, the U.S. Court of Appeals for the Second Circuit overturned their convictions in 2015. The court ruled that the government needed to prove that the tippee knew that the insider had received a personal benefit in exchange for the tip, and that the benefit had to be of a "pecuniary or similarly valuable nature." This decision raised the bar for prosecuting insider trading cases involving tippees.
- **Impact:** Prosecutors faced new difficulties after the Newman case, mainly in establishing the tippee's awareness of the insider's gain in insider trading cases. Insider

trading prosecutions temporarily decreased as a result of this decision, but later decisions and legislative efforts to make the law more clear partially offset this trend.

1.2.2 Judicial Interpretations

The enforcement and development of insider trading regulations in the United States have been greatly impacted by judicial interpretations of these laws. The interpretation and application of insider trading statutes are greatly influenced by court decisions, which frequently provide clarification on legally ambiguous provisions. This section examines the various interpretations of insider trading laws by courts, especially the U.S. Supreme Court and appellate courts, and how these interpretations have influenced the legal environment.

1.2.2.1 The Role of the Judiciary in Defining Insider Trading

The influence of the judiciary on the development of insider trading laws is significant. Insider trading laws have developed through a combination of legislative actions, regulatory rules, and, crucially, judicial interpretations. This is in contrast to many other areas of securities law, where regulations are clearly outlined in a single statute.

1.2.2.2 Key Judicial Decisions Shaping Insider Trading Law

The way insider trading laws are interpreted and applied has been greatly impacted by a number of important court decisions. These rulings have established precedents that continue to direct the prosecution and defence of insider trading cases and have clarified how the law should be applied.

Chiarella v. United States (1980):

The U.S. Supreme Court addressed the question of whether someone who is not a corporate insider but learns confidential information through other channels can be held

accountable for insider trading in this landmark decision. The Court limited who can face prosecution under insider trading laws by ruling that insider trading liability necessitates a breach of fiduciary duty. This ruling established the rule that there must be a duty to disclose or refrain from trading in order to justify the mere possession of non-public information.[lxxx]

Dirks v. SEC (1983):

The idea of tipper-tippee liability in insider trading was further elucidated by this case. According to a Supreme Court decision, a tipper—the person who provides the information—must have violated a fiduciary duty by providing the tip and did so for personal gain in order for the tipee—the person receiving the non-public information—to be held accountable. The "personal benefit" test was established by this ruling and is still a crucial part of insider trading legislation.

United States v. O'Hagan (1997):

The "misappropriation theory" of insider trading was developed in the O'Hagan case, expanding the parameters of liability. According to this theory, even if a person has no obligation to the shareholders of the company whose stock they traded, they may still be charged with insider trading if they misuse confidential information for securities trading in violation of a duty owed to the information source. Because of this ruling, insider trading laws now encompass a wider variety of dishonest activities.[lxxxi]

1.2.2.3 Evolving Interpretations and Their Implications

As financial markets and technologies evolve, courts continue to play a critical role in interpreting insider trading laws to address new challenges. Recent cases have seen courts

grapple with issues such as the use of advanced analytics, high-frequency trading, and the role of social media in the dissemination of information.

Courts are now examining the applicability of traditional insider trading laws in the digital age due to the emergence of new technologies. In order to ensure that insider trading laws remain relevant in an increasingly complex financial landscape, courts have been forced to adapt existing legal principles to modern contexts in cases involving the use of algorithms, big data, and electronic communications.

The emergence of social media platforms has led to renewed enquiries concerning the distinction between information that is public and non-public. Determining whether subsequent trades constitute insider trading becomes more difficult when information is shared on social media before a company formally discloses it. This is something that courts have had to deal with.

The complex nature of insider trading schemes will drive further evolution in judicial interpretations. Courts will have to strike a compromise between the needs of maintaining justice and safeguarding market integrity and the realities of contemporary financial practices. Insider trading laws are expected to undergo additional refinement due to the continuous evolution of judicial interpretations, especially with the emergence of novel financial instruments and trading strategies.

1.3 Current Legislation and Regulations

1.3.1 Key Laws

A system of federal laws, rules, and regulations aimed to maintain integrity and fairness in the financial markets manages insider trading regulation in the United States. These laws give regulatory agencies like the Securities and Exchange Commission (SEC) the authority to enforce compliance, define insider trading, and set penalties for violations. The main statutes that serve as the foundation of American legislation against insider trading are described in this section. (Since The Securities Exchange of Act 1934 pointed out previously in this guide we will continue with Act of 1988)

1.3.1.1 Insider Trading Sanctions Act of 1984

The Insider Trading Sanctions Act of 1984 (ITSA) was passed in order to make insider trading laws more strictly enforced by strengthening the penalties for breaking them. High-profile insider trading scandals in the 1980s demonstrated the need for stronger prohibitions against insider trading, which led to the passage of the Act.

If found guilty of insider trading, a person may face civil penalties under the ITSA equal to three times the profit or loss that was prevented by the illegal trades. The purpose of these "treble damages" is to act as a potent financial deterrent to insider trading.

Additionally, the ITSA required broker-dealers and other market participants to take reasonable measures to prevent insider trading within their organisations, and it gave the SEC more authority to prosecute cases involving insider trading.[lxxxii]

1.3.1.2 Insider Trading and Securities Fraud Enforcement Act of 1988

The legislative framework for preventing insider trading was reinforced with the enactment of the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA).

Growing doubts about the ability of current legislation to prevent insider trading, especially in the wake of multiple high-profile prosecutions, served as the motivation for the Act.

The imposition of liability on "controlling persons," such as corporate officers and directors, who neglect to take appropriate action to prevent insider trading by those under their control, is one of the main provisions of the ITSFEA. This clause emphasises how crucial internal controls and corporate governance are to stopping insider trading.

The maximum criminal penalties for insider trading violations were raised by the ITSFEA, which also raised the potential fines and jail terms for those found guilty of insider trading. This demonstrated even more how serious insider trading crimes are and how dedicated the government is to maintaining securities laws.

1.3.1.3 Sarbanes-Oxley Act of 2002

In response to the corporate scandals of the early 2000s, including those involving Enron and WorldCom, the Sarbanes-Oxley Act of 2002 (SOX) was passed and became law. The Act includes measures to prevent insider trading and improve the accountability of corporate executives in addition to addressing a wide range of corporate governance and financial reporting issues.

Corporate officers and directors are required to report changes in their ownership of company stock to SOX within two business days, among other stricter reporting requirements. This clause promotes openness and makes it possible for investors and regulators to keep a closer eye on insider trading activity. (Section 403)

Along with tougher sanctions for insider trading and other forms of securities fraud, SOX also imposed new demands on CEOs and CFOs regarding their certification of the accuracy of financial statements. The goal of these actions is to discourage business executives from participating in or accepting insider trading.

1.3.1.4 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In reaction to the 2008 financial crisis, the Dodd-Frank Act was passed, bringing significant changes to the financial regulatory framework. The Act included several provisions that improved protections against insider trading and strengthened the SEC's enforcement authority.

Dodd-Frank's creation of a whistleblower program, which rewards people for reporting breaches of securities laws, including insider trading, is one of its main characteristics. The possibility of financial rewards for whistleblowers who supply unique information that results in successful enforcement actions has led more people to report cases of insider trading.

Additionally, Dodd-Frank increased the SEC's jurisdiction to oversee hedge funds and other private investment firms, which have been linked to certain insider trading incidents. The Act lessens the possibility of insider trading in less regulated areas of the financial markets by requiring these entities to register with the SEC and submit to increased oversight.

1.3.2 Regulatory Bodies

As mentioned before, a number of important regulatory agencies are largely in charge of enforcing insider trading laws in the US. These organisations have the responsibility of

monitoring the securities markets, looking into possible infractions, and prosecuting insider traders. An overview of the key regulatory agencies tasked with stopping insider trading, their functions, and the ways in which they cooperate to protect the integrity of the financial system are given in this section. Since SEC was vital for this topic it is covered previously in this guide, therefore we will continue with other agencies.

1.3.2.1 The Financial Industry Regulatory Authority (FINRA)

The self-regulatory Financial Industry Regulatory Authority (FINRA) is in charge of the US exchange markets and communicating businesses. Even though FINRA is a separate entity from the SEC, the two agencies collaborate closely to maintain regulatory compliance and enforce securities laws.

In order to keep an eye on trading activity on stock exchanges and over-the-counter markets, FINRA is essential. Its surveillance systems are intended to identify anomalous trading patterns that could point to market manipulation or insider trading. By adding another level of supervision to the SEC's efforts, FINRA's market surveillance initiatives increase their efficiency.

FINRA launches investigations to obtain information and determine whether violations have taken place when it discovers possible insider trading. FINRA has the power to impose disciplinary actions, such as fines, suspensions, and restrictions on people or companies from engaging in the securities industry, in the event that a violation is verified. These steps help with protecting the integrity of the market and protecting investors from dishonest practices.

When necessary, FINRA and the SEC work closely together to coordinate enforcement actions and share information. Through this partnership, insider trading and other

securities law violations will be effectively dealt with by both organisations utilising their unique strengths.[lxxxiii]

1.3.2.2 The Department of Justice (DOJ)

By pursuing criminal cases against people and organisations suspected of insider trading, the Department of Justice (DOJ) contributes significantly to the enforcement of laws against insider trading. The DOJ is in charge of filing criminal charges, which carry more severe penalties such as jail time, while the SEC is in charge for civil enforcement.

Cases involving planned and serious violations of securities laws involving insider trading are brought to justice by the DOJ, frequently via its U.S. Attorneys' Offices. The most serious cases, where the evidence clearly demonstrates a clear intent to commit fraud and significant harm to the markets or investors, are usually the ones that result in criminal prosecutions.

The DOJ and SEC collaborate closely in numerous insider trading cases. When there is a suspicion of criminal activity, the SEC may refer cases to the DOJ. The two agencies frequently work together to develop compelling cases against offenders. By working together, it is possible to pursue both criminal and civil penalties, which increases the enforcement actions' deterrent power.

Numerous high-profile insider trading cases have been prosecuted by the DOJ, and those found guilty have received long sentences in prison. These cases warn would-be

violators that insider trading is a serious criminal offence with harsh penalties in addition to being a civil violation.[lxxxiv]

1.3.2.3 The Commodity Futures Trading Commission (CFTC)

Insider trading in these markets is under the authority of the Commodity Futures Trading Commission (CFTC), even though its primary responsibility is the futures and derivatives markets. As the markets for futures, options, and other derivatives have grown, so too has the CFTC's role in stopping insider trading.

Insider trading in the derivatives and commodities markets may be looked into and prosecuted by the CFTC. This includes trading in swaps, futures contracts, and options on futures. Similar to the SEC, the CFTC enforces laws through civil penalties, profit disgorgement, and other measures to correct infractions.[lxxxv]

The CFTC and SEC frequently collaborate on enforcement matters because of the overlap between the securities and derivatives markets. This partnership makes it possible to effectively police insider trading in a variety of financial markets and instrument types.

The market surveillance tools of the CFTC are intended to identify any trading irregularities that might point to insider trading. The CFTC investigates suspected violations and, if necessary, files enforcement actions to hold violators liable and discourage similar behaviour in the future.

1.3.2.4 State Regulators and Attorneys General

Attorneys general and state securities regulators, in addition to federal regulators, are involved in the enforcement of insider trading laws. When it comes to insider trading within their borders, these state-level authorities frequently collaborate with federal organisations.

Insider trading is prohibited by numerous state securities laws, also known as "blue sky laws," which are passed by numerous states. State regulators have the authority to independently enforce these laws or work with federal agencies to do so, especially when additional remedies are provided by state laws or when the conduct primarily affects state residents.

According to state laws, state solicitors have the authority to file civil or criminal lawsuits against people or companies that engage in insider trading. These steps can support federal enforcement initiatives and offer more ways to hold offenders accountable.

1.3.3 Recent Developments

The United States' regulatory and enforcement framework for insider trading has changed in recent years in response to fresh difficulties and shifting market conditions. These changes are a reflection of the continuous work being done by legislators, regulatory agencies, and courts to strengthen the laws governing insider trading and address new concerns. This section examines a few of the most significant recent developments in the law pertaining to insider trading, such as notable cases, legislative modifications, and technological advancements in enforcement.

1.3.3.1 Legislative Changes and Proposals

Several legislative initiatives aimed at modernising and strengthening the regulatory framework have been made in response to growing concerns about the suitability of the

current insider trading laws. These programs aim to strengthen sanctions for infractions, close legal loopholes, and define legal requirements.

The passage of the Stop Trading on Congressional Knowledge (STOCK) Act in 2012 was one significant legislative development. This law was passed in reaction to concerns that government workers, including members of Congress, might use confidential information they learnt while performing their official duties for financial gain. Such actions are expressly forbidden by the STOCK Act, which also mandates that public officials disclose securities transactions promptly. In order to guarantee that legislators and government workers are held to the same standards as corporate insiders, this legislation represented a major step forward.

The continuous endeavour to enact the Insider Trading Prohibition Act (ITPA) is another significant development. Despite not being signed into law yet, Congress has shown a great deal of interest in and support for the ITPA. A precise legal definition of insider trading, which has mostly been established by court rulings, is what the proposed legislation seeks to codify. The ITPA aims to make insider trading laws more enforceable by reducing ambiguity and offering a more precise legal framework. Additionally, the Act would broaden the definition of liability to cover people who trade using information that they know or should know was obtained in violation of a confidentiality obligation. (STOCK Act and ITPA will be covered more detailed.)

1.3.3.2 Notable Cases and Judicial Rulings

The interpretation and implementation of laws related to insider trading have been influenced by recent court cases. These cases demonstrate how insider trading enforcement is constantly changing and how difficult it is to draw clear lines between what is and is not illegal behaviour.

United States v. Salman (2016):

An important advancement in insider trading legislation was the Supreme Court's decision in the case of United States v. Salman. In this case, the tipper's close relative provided the tipee with confidential information, which the tipee traded. The Court maintained the conviction, holding that even in the absence of a concrete personal benefit, a tipper violates their fiduciary duty when they give trading relatives or friends access to confidential information. The principle that insider trading liability can extend to those who receive and trade on tips from insiders was reinforced by this decision, which also clarified the "personal benefit" requirement set in earlier cases such as Dirks v. SEC.[lxxxvi]

United States v. Blaszczak (2019):

United States v. Blaszczak is another noteworthy case that broadened the application of insider trading liability under the "misappropriation theory." The case concerned government workers who gave a hedge fund access to private information that they had stolen from the Centres for Medicare & Medicaid Services (CMS). The accused contended that since the data was not "property," it was exempt from the usual insider trading laws. But the Second Circuit Court of Appeals maintained their convictions, finding that insider trading could in fact occur when private information obtained from the government is misused for one's own benefit. This case demonstrated the wide application of insider trading laws and the misappropriation theory's suitability for non-traditional types of confidential information.[lxxxvii]

1.3.3.3 Technological Advancements in Enforcement

Technological developments have had major effects on how insider trading is found, looked into, and dealt with. Regulatory agencies are using more advanced instruments and methods to keep up with the rapidity and complexity of today's financial markets.

Detecting suspicious trading patterns using big data and advanced analytics is one of the most significant developments in enforcement. The SEC and other regulatory organisations have made investments in cutting-edge technology that allows them to instantly analyse enormous volumes of trading data and spot irregularities that might point to insider trading. With the use of these tools, regulators can keep an even closer eye on the markets, saving time and money in the process of identifying illicit activity.

Artificial intelligence (AI) and machine learning are also becoming more and more important in the fight against insider trading. In trading data, these technologies can spot intricate relationships and patterns that conventional approaches might overlook. To identify possible insider trading, for instance, AI algorithms can cross-reference news articles, social media posts, and financial transactions. Insider traders now have a harder time avoiding detection thanks to the adoption of these technologies, which have allowed regulators to analyse data at a speed and scale never before possible.

The emergence of cryptocurrencies and blockchain technology brings opportunities as well as challenges for the enforcement of insider trading laws. On the one hand, it might be more difficult to track down illicit transactions due to the decentralised and anonymous nature of cryptocurrencies. However, the intrinsic transparency and immutability of blockchain provide new ways to monitor financial transactions and confirm the origin of trades. In addition to looking into ways to use blockchain technology in their enforcement efforts, regulators are concentrating more and more on how to apply current insider trading laws to the cryptocurrency markets.

1.3.3.4 Global Cooperation and Cross-Border Enforcement

International collaboration has become more and more necessary for the enforcement of insider trading laws as financial markets grow more interconnected. The significance of

cross-border cooperation in identifying and combating insider trading has been brought to light by recent events.

Numerous international agreements and memoranda of understanding (MOUs) have been signed by regulatory bodies such as the SEC with their counterparts in other nations. By facilitating the sharing of resources and information, these agreements allow regulators to pursue multi-jurisdictional insider trading cases. For instance, in order to look into and prosecute cross-border insider trading schemes, the SEC has collaborated closely with the Financial Conduct Authority (FCA) in the United Kingdom and other international regulators.

Cases lately have shown that American regulators are becoming more inclined to pursue insider trading cases involving extraterritorial components. The SEC's authority to take action against foreign individuals and entities whose conduct has a significant impact on U.S. markets has generally been upheld by courts. The SEC has been able to combat increasingly complex insider trading schemes that cut across borders and legal frameworks thanks to this strategy.

1.3.4 Insider Trading Prohibition Act (ITPA)

A legislative proposal called the Insider Trading Prohibition Act (ITPA) seeks to establish a more comprehensive and clear legal framework for the prosecution of insider trading in the United States. By establishing a statutory definition of insider trading, the Act aims to codify what has primarily been determined by judicial interpretations, thereby assisting in the removal of ambiguities and inconsistent enforcement practices.[lxxxviii]

Insider trading is defined by the ITPA as the act of buying or selling a security while in possession of significant, confidential information that was acquired by breaching a duty of

confidence. This would give clear guidance to market participants and regulators, as well as solidify the legal standards used to prosecute insider trading cases.

The contentious "personal benefit" requirement, which has been at the centre of numerous insider trading cases, is addressed by the Act. Insiders must gain some sort of personal gain from supplying the information in order for insider trading to be prosecuted under current law. By clarifying this requirement, the ITPA makes it simpler to prosecute cases in which the benefit may not be immediately apparent or palpable.[lxxxix]

The ITPA broadens the definition of liability to cover people who trade using information that they know or should know was obtained illegally. This includes other parties who are aware of the improper origin of the information but may not have directly received it from an insider.

For those found guilty of insider trading, the Act suggests harsher punishments, such as higher fines and possibly longer jail terms. This would act as a more potent disincentive to engage in illicit trading.

The ITPA covers emerging markets, such as those for digital assets and cryptocurrencies, in addition to established securities markets. This guarantees that, despite the financial markets' constant change, insider trading laws will always be applicable.

1.3.4.1 Importance of the ITPA

The absence of a precise legal definition has been one of the main obstacles to prosecuting insider trading. The ITPA provides a clear legal framework in an effort to end the dependency on judicial interpretation. This would lessen the uncertainty that frequently makes enforcement actions more difficult.

The ITPA would contribute to ensuring that all market participants have access to the same information by fortifying the legal framework, so fostering fairness and transparency. Maintaining investor confidence and the general integrity of the financial markets depend on this.

The incorporation of digital assets and cryptocurrencies into the authority of the ITPA is especially crucial given the ongoing expansion of these markets. The Act makes sure that the laws against insider trading adapt to new developments in technology and the shifting dynamics of the financial markets.

1.3.4.2 Legislative Status of the ITPA

The Insider Trading Prohibition Act has not yet been signed into law. The Act has been introduced and passed several times in the U.S. House of Representatives, with bipartisan support in 2019 and 2021 being the most notable years. The U.S. Senate has not, however, approved the bill.

A number of issues contributed to the Senate's inability to approve the ITPA include divergent legislative agendas, worries about the law's possible effects on legal business operations, and disagreements over the Act's necessity in light of current insider trading laws. In spite of this, the ITPA is still a noteworthy piece of proposed legislation, and those who support it will keep pushing for its approval in order to fortify the legal framework that prohibits insider trading in the United States.

1.3.5 Stop Trading on Congressional Knowledge (STOCK) Act

On April 4, 2012, the U.S. federal government passed the STOCK Act (Stop Trading on Congressional Knowledge Act) in response to worries about insider trading and conflicts of interest in the federal government, particularly among members of Congress. The public's growing outrage over the belief that public servants might profit financially from the stock market by using confidential information they learnt while performing their official duties led to the introduction of the legislation.[xc]

Members of Congress, their staff, and other federal employees are expressly forbidden by the STOCK Act from using confidential information they have access to as a result of their official positions for financial gain. This includes making purchases or sales of securities based on insider information that the broader public is not aware of.

Under the Act, public disclosure of any securities transaction exceeding $1,000 must be made within 45 days of the transaction by members of Congress and certain high-ranking government officials. By implementing this transparency measure, officials will be held responsible for their financial actions and possible conflicts of interest will be avoided.

The STOCK Act requires the establishment of an online database where the general public can view government officials' financial disclosure reports in an effort to increase transparency. By providing stock trade details, this database helps the public and media keep an eye out for possible conflicts of interest.

In order to inform them about the legal and moral requirements surrounding insider trading and conflicts of interest, the Act mandates mandatory ethics training for all federal employees, including members of Congress and their staff.

If government officials possess non-public information that could impact the market, the STOCK Act restricts their participation in initial public offerings (IPOs). The purpose of this clause is to stop public servants from abusing their positions for personal benefit.

1.3.5.1 Importance of the STOCK Act

The STOCK Act's resolution of public concerns regarding possible official corruption and conflicts of interest is one of its main justifications. The Act contributes to the preservation and restoration of public confidence in the credibility of governmental institutions by outlawing insider trading and demanding increased transparency.

When coupled with the need for public disclosure, the possibility of legal repercussions acts as a potent disincentive to unethical behaviour. If public officials are aware that the public and media will be closely watching them, they are less likely to participate in insider trading or other conflicts of interest.[xci]

When it comes to trading securities, government employees are held to the same standards and guidelines as the general public, thanks to the STOCK Act. This guarantees that no one has an unfair advantage because of their access to privileged information, helping to level the playing field in the financial markets.

Transparency and accountability are promoted by the establishment of an online database where the general public can view the financial transactions of public officials. It facilitates the process of identifying possible conflicts of interest and holding public servants accountable, as well as watchdog groups and journalists.

The STOCK Act encourages a culture of integrity in the federal government by outlining precise ethical guidelines and mandating training for public servants. It emphasises the value of acting morally and works to stop power abuses.

1.3.5.2 Legislative Status of the STOCK Act

Both the US Senate and the US House of Representatives passed the STOCK Act with resounding bipartisan support. On April 4, 2012, President Barack Obama signed the bill into law. An important legislative response to worries about insider trading and conflicts of interest within the federal government was the passing of the STOCK Act.

The STOCK Act has changed a little since it was passed. Citing privacy and security concerns, an Act amendment was passed in 2013 that reduced the requirements for online disclosure for specific government employees. Members of Congress and other high-ranking officials are still required to disclose certain financial information, but this amendment restricted the amount of information that was previously available to certain federal employees.

The fundamental elements of the STOCK Act are still in effect in spite of these modifications, and the legislation is still very important in encouraging openness, responsibility, and moral conduct among public servants.

1.3.5.3 The Challenges that the STOCK Act Might Face

There are still some areas of uncertainty even with the clarity that the STOCK Act aims to bring about, especially when it comes to the definition of a violation. For instance, different definitions of "material, non-public information" may result in different interpretations and make it more difficult to prove insider trading under the Act.[xcii]

Some officials may use blind trusts or other financial instruments to manage their assets while in office, potentially circumventing the spirit of the STOCK Act. While these trusts are meant to prevent conflicts of interest, there is concern that they could be used to obscure true ownership or control of assets.

Insider trading's direct financial gains are the main focus of the STOCK Act. Officials may, nevertheless, be able to gain access to confidential information inadvertently through close friends or family members. This makes it difficult to stop all potential channels for information misuse.

The rise of new financial instruments, such as cryptocurrencies and decentralized finance (DeFi) platforms, presents a challenge for the STOCK Act. These emerging markets may not be fully covered by the Act's provisions, leading to gaps in regulation and enforcement.

Insider trading is becoming harder to identify and prosecute due to the growing use of technology in the financial markets, such as algorithmic trading and artificial intelligence. It might be necessary to update the STOCK Act frequently to keep up with the rapid advancements in technology and the changing landscape of financial crimes.

The STOCK Act may be used as a political weapon, with opponents using accusations of conflict of interest or noncompliance to undermine public servants. This might create an atmosphere of distrust and prompt a lot of ethics probes, which could divert attention from real governance.

Due to the Act's requirements regarding transparency, there is a possibility that high levels of media scrutiny will cause more important issues to be overshadowed by minor or

inadvertent infractions. Perceived conflicts of interest may be overemphasised by the public and media, even in situations where no real misconduct has taken place.

1.4 Points Should Be Covered

1. Are current insider trading laws in the United States sufficient to deter and punish illegal activities?
2. Should there be a more precise statutory definition of insider trading to reduce ambiguity and improve enforcement?
3. What changes, if any, should be made to the Securities Exchange Act of 1934 to strengthen insider trading regulations?
4. How can the SEC and other regulatory bodies improve the detection and prosecution of insider trading?
5. How can regulatory bodies leverage blockchain technology to monitor and enforce insider trading laws in cryptocurrency markets?
6. Are current judicial interpretations of insider trading laws consistent, or is there a need for clearer guidelines?
7. Should insider trading laws be applied more stringently to members of Congress and other government officials under the STOCK Act?**
8. Should Congress consider passing the Insider Trading Prohibition Act (ITPA) to provide a clearer and more comprehensive legal framework?**

[i] https://www.senate.gov/about/powers-procedures.htm
[ii] ibid.
[iii] https://www.senate.gov/about/origins-foundations.htm
[iv] ibid.
[v] https://www.senate.gov/about/powers-procedures.htm
[vi] ibid.
[vii] ibid.
[viii] https://www.senate.gov/about/powers-procedures/treaties.htm
[ix] ibid.
[x] https://www.senate.gov/about/powers-procedures/filibusters-cloture.htm
[xi] ibid.
[xii] ibid.
[xiii] ibid.
[xiv] https://www.senate.gov/about/origins-foundations/parties-leadership.htm
[xv] ibid.
[xvi] https://www.senate.gov/about/officers-staff/vice-president.htm
[xvii] https://senate.gov/about/officers-staff/president-pro-tempore.htm
[xviii] ibid.
[xix] https://www.senate.gov/about/origins-foundations/parties-leadership/majority-minority-leaders.htm
[xx] ibid.
[xxi] https://www.senate.gov/about/origins-foundations/parties-leadership/party-whips.htm
[xxii] Kamarck, E. (2021, October 26). *Voter suppression or voter expansion? What's happening and does it matter?* Brookings Institution. https://www.brookings.edu/blog/fixgov/2021/10/26/voter-suppression-or-voter-expansion-whats-happening-and-does-it-matter/
[xxiii] ibid.
[xxiv] Congressional Research Service. (2023). *The expansion of early voting laws in the United States*. CRS Report R47520. https://crsreports.congress.gov/product/pdf/R/R47520
[xxv] ibid.
[xxvi] ibid.
[xxvii] ibid.
[xxviii] Rome, S.H. (2022). *How We Got Here: A Brief History of Voting Rights. In: Promote the Vote.* Springer, Cham. https://doi.org/10.1007/978-3-030-84482-0_3
[xxix] Library of Congress. (n.d.). *The 15th Amendment: What does it say*? Library of Congress. Retrieved from https://www.loc.gov
[xxx] ibid.
[xxxi] National Archives. (n.d.). *19th Amendment to the U.S. Constitution: Women's right to vote*. National Archives. Retrieved September 2, 2024, from https://www.archives.gov/milestone-documents/19th-amendment
[xxxii] ibid.
[xxxiii] ibid.
[xxxiv] Bickel, A. M. (1962). *The Supreme Court and the idea of progress*. Harvard University Press.
[xxxv] ibid.
[xxxvi] U.S. National Archives and Records Administration. (n.d.). *26th Amendment to the U.S. Constitution: Lowering the voting age to 18*. Retrieved September 2, 2024, from https://www.archives.gov/founding-docs/amendments-11-27
[xxxvii] National Academies of Sciences, Engineering, and Medicine. (2020). *Securing the vote: Protecting American democracy*. The National Academies Press. https://doi.org/10.17226/25336
[xxxviii] ibid.
[xxxix] **Gronke, P., & Miller, P. (2022).** *The future of election integrity in the United States*. *Annual Review of Political Science*, *25*, 215-236. https://doi.org/10.1146/annurev-polisci-051620-090943
[xl] ibid.
[xli] National Conference of State Legislatures. (2020). *The role of states in election administration*. Retrieved from https://www.ncsl.org/research/elections-and-campaigns/the-role-of-states-in-election-administration.aspx
[xlii] ibid.

[xliii] Burden, B. C., & Kimball, D. C. (2010). *Election administration: A new view from the states.* Cambridge University Press.
[xliv] ibid.
[xlv] **Cohen, A. (2015).** *The Voting Rights Act of 1965: An introduction*. In *The Oxford Handbook of American Politics* (pp. 35-50). Oxford University Press.
[xlvi] Brunner, B. (2014). *Shelby County v. Holder: The end of the Voting Rights Act? Harvard Law Review*, 127(8), 2236-2268. https://doi.org/10.2307/23893064
[xlvii] ibid.
[xlviii] **Gronke, P., & Stewart, C. (2021).** *The effects of voter identification laws on voter turnout: Evidence from recent research. Election Law Journal*, *20*(3), 187-203. https://doi.org/10.1089/elj.2021.0042
[xlix] ibid.
[l] ibid.
[li] Brunner, B. (2014). *Shelby County v. Holder: The end of the Voting Rights Act? Harvard Law Review*, 127(8), 2236-2268. https://doi.org/10.2307/23893064
[lii] ibid.
[liii] ibid.
[liv] ibid.
[lv] **Smith, R. M.** (2019). *The right to vote: An examination of voter suppression and disenfranchisement in marginalized communities. Journal of Democracy*, *30*(2), 25-39. https://doi.org/10.1353/jod.2019.0021
[lvi] ibid.
[lvii] ibid.
[lviii] **Pew Research Center.** (2020). *Americans' views of election security and foreign interference*. https://www.pewresearch.org/short-reads/2020/08/18/75-of-americans-say-its-likely-that-russia-or-other-governments-will-try-to-influence-2020-election/
[lix] **U.S. Government Accountability Office (GAO).** (2022). *Election security: Federal actions needed to address cybersecurity risks and improve resilience*. https://www.gao.gov/assets/gao-24-107231.pdf
[lx] ibid.
[lxi] ibid.
[lxii] ibid.
[lxiii] **Gordon, S. (2019).** *Campaign finance reform in the United States: A historical and legal analysis*. Cambridge University Press.
[lxiv] ibid.
[lxv] **Mann, T. E., & Corrado, A. (2019).** *The future of campaign finance reform*. Brookings Institution Press.
[lxvi] **Sunstein, C. R. (2018).** *The limits of campaign finance reform*. University of Chicago Press.
[lxvii] ibid.
[lxviii] ibid.
[lxix] **Holland, S. (2020).** *Election interference and the role of social media. Harvard International Review*, *41*(2), 32-37.
[lxx] ibid.
[lxxi] ibid.
[lxxii] ibid.
[lxxiii] "What Is Insider Trading and When Is It Legal?" 2024. Investopedia. 2024. https://www.investopedia.com/terms/i/insidertrading.asp.
[lxxiv] Graham, John, Oliver Binz, John Graham, and Oliver Binz. 2020. "The Information Content of Corporate Earnings: Evidence from the Securities Exchange Act of 1934." The Harvard Law School Forum on Corporate Governance. The Harvard Law School Forum on Corporate Governance. July 6, 2020. https://corpgov.law.harvard.edu/2020/07/06/the-information-content-of-corporate-earnings-evidence-from-the-securities-exchange-act-of-1934/.
[lxxv] Harton, Oni. 2021. "Securities and Exchange Act Section 10(B) and Rule 10b-5." Findlaw. January 5, 2021. https://www.findlaw.com/consumer/securities-law/securities-and-exchange-act-rule-10b.html.
[lxxvi] and, Punishment. 2023. "Law Offices of Robert Wayne Pearce." Law Offices of Robert Wayne Pearce. June 10, 2023. https://www.secatty.com/legal-blog/insider-trading/.
[lxxvii] "Pocketful Blog." 2024. Pocketful. July 31, 2024. https://www.pocketful.in/blog/trading/material-nonpublic-information-mnpi/.

[lxxviii] “Ivan Boesky | Wall Street Financier, Insider Trading Scandal | Britannica Money.” 2024. In *Encyclopædia Britannica*. https://www.britannica.com/money/Ivan-Boesky.
[lxxix] “United States v. Newman, No. 13-1837 (2d Cir. 2014).” 2014. Justia Law. 2014. https://law.justia.com/cases/federal/appellate-courts/ca2/13-1837/13-1837-2014-12-10.html.
[lxxx] Nagy, Donna M. 2020. “Chiarella v. United States and Its Indelible Impact on Insider Trading Law.” Digital Repository @ Maurer Law. 2020. https://www.repository.law.indiana.edu/facpub/3015/.
[lxxxi] “United States v. O’Hagan, 521 U.S. 642 (1997).” 2024. Justia Law. 2024. https://supreme.justia.com/cases/federal/us/521/642/.
[lxxxii] “H.R.559 - 98th Congress (1983-1984): Insider Trading Sanctions Act of 1984.” 2024. Congress.gov. 2024. https://www.congress.gov/bill/98th-congress/house-bill/559.
[lxxxiii] Goedtel, Jessica. 2024. “What Is FINRA?” *Forbes*, May 21, 2024. https://www.forbes.com/advisor/investing/financial-advisor/what-is-finra/.
[lxxxiv] “Merriam-Webster Dictionary.” 2024. Merriam-Webster.com. 2024. https://www.merriam-webster.com/legal/Department%20of%20Justice.
[lxxxv] “Futures Glossary | CFTC.” 2024. Cftc.gov. 2024. https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm.
[lxxxvi] “United States v. Salman: Supreme Court Reaffirms ‘Friends with Benefits’ Test in Insider Trading Cases.” 2016. Akin Gump Strauss Hauer & Feld LLP - United States v. Salman: Supreme Court Reaffirms “Friends with Benefits” Test in Insider Trading Cases. Akin Gump Strauss Hauer & Feld LLP. 2016. https://www.akingump.com/en/insights/alerts/united-states-v-salman-supreme-court-reaffirms-friends-with.
[lxxxvii] Burgess, Angela, Greg Andres, Kenneth Wainstein, Martine Beamon, Neil MacBride, Paul Nathanson, Angela Burgess, et al. 2021. “Supreme Court Relies on ‘Bridgegate’ Case to Vacate Second Circuit Decision.” The Harvard Law School Forum on Corporate Governance. The Harvard Law School Forum on Corporate Governance. February 17, 2021. https://corpgov.law.harvard.edu/2021/02/17/supreme-court-relies-on-bridgegate-case-to-vacate-second-circuit-decision/.
[lxxxviii] Quigley, Kayla. 2021. “The Insider Trading Prohibition Act: A Small Step towards a Codified Insider Trading Law.” FLASH: The Fordham Law Archive of Scholarship and History. 2021. https://ir.lawnet.fordham.edu/jcfl/vol26/iss1/4/.
[lxxxix] Puletti, Natalie. 2020. “A Brief Overview of H.R.2534: Insider Trading Prohibition Act | CLB | Criminal Law Brief.” Gwu.edu. 2020. https://studentbriefs.law.gwu.edu/clb/2020/07/26/a-brief-overview-of-h-r-2534-insider-trading-prohibition-act/.
[xc] “What Is a ‘Security’ under the Securities Act (and Why Does It Matter)? – Please Visit Https://Www.investmentslawyers.com/.” 2021. Investinglawyer.com. February 3, 2021. https://investinglawyer.com/2021/02/03/what-is-a-security-under-the-securities-act-and-why-does-it-matter/.
[xci] “STOCK Act: Meaning, Overview, Criticisms.” 2024. Investopedia. 2024. https://www.investopedia.com/terms/s/stop-trading-on-congressional-knowledge-act.asp.
[xcii] “What Is the Stop Trading on Congressional Knowledge (STOCK) Act? - Insider Trading by Congress - ProCon.org.” 2020. Procon.org. 2020. https://insidertrading.procon.org/view.resource.php?resourceID=004520.