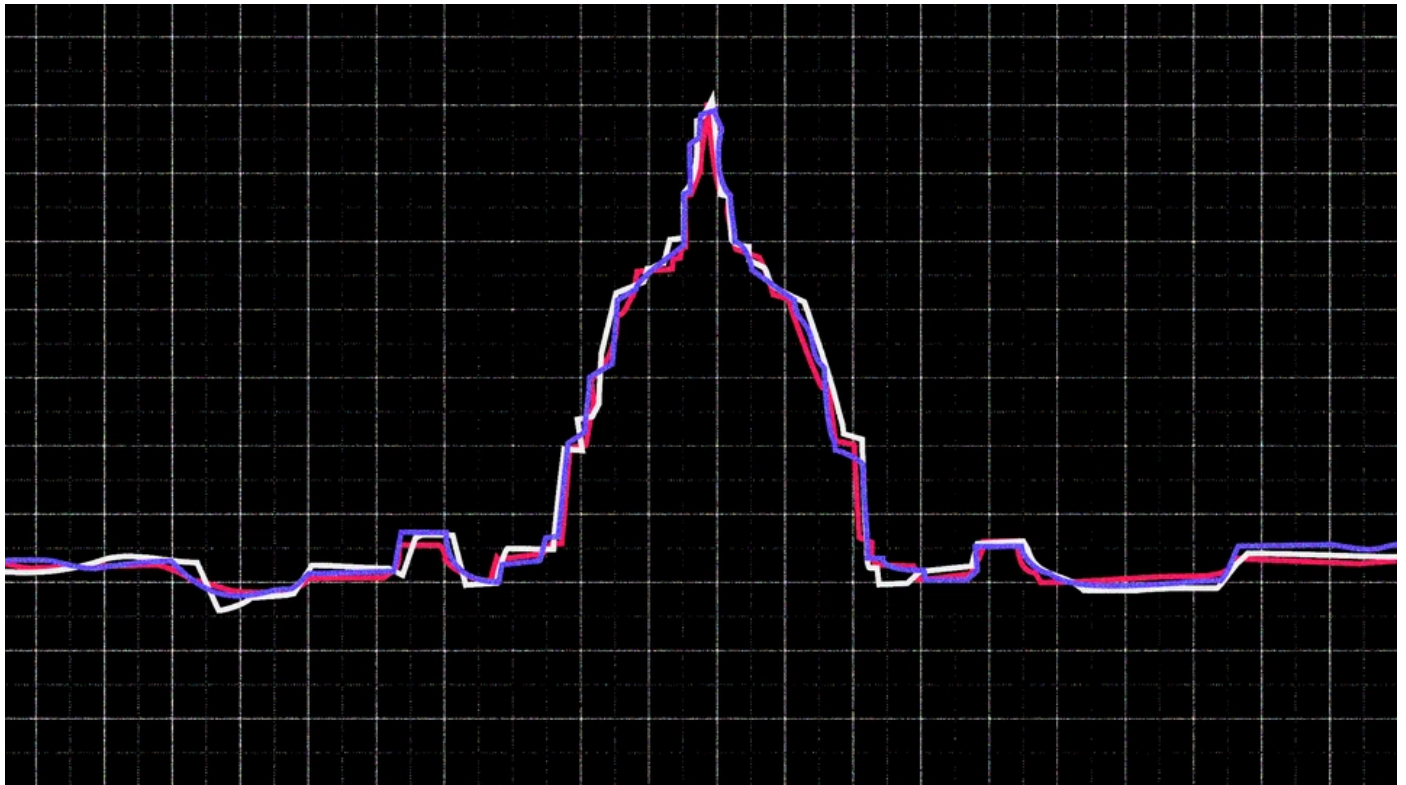


The Bill That Congress Might Be Embarrassed Enough to Pass

Will Congress take the bold step of barring its members from trading stocks?

By [Russell Berman](#) January 30, 2022



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In secret meetings two years ago this month, members of Congress were briefed on what the rest of America would soon learn: A deadly virus was spreading rapidly overseas and headed for the United States. Some lawmakers acted immediately—not in the public’s interest, but in their own. They sold stocks weeks before markets crashed, when the scale of the threat posed by the novel coronavirus became broadly known. A global pandemic was unfolding, and these lawmakers were fretting as much about

the health of their financial portfolios as about the health of their constituents.

Congress thought it had already fixed what looked alarmingly like [insider trading by its members](#). In 2012, lawmakers overwhelmingly voted to enact a bill known as the STOCK Act, banning themselves from using information they learned on the job for personal financial benefit. The law required sitting members—along with their staff and public officials in other branches of the government—to make more specific and timely disclosures about their financial transactions. Although the law helped the public spot conflicts of interest, it was unable to prevent them. “Members hear all kinds of news that essentially may amount to insider trading, but it’s almost impossible to enforce insider trading and to prove what happened when,” Senator Jeff Merkley of Oregon, a Democrat who has been pushing for years to restrict stock trading by members of Congress, told me.

The Justice Department investigated several senators for their 2020 stock dumps but filed no charges. The allegations of pandemic profiteering did, however, have major political repercussions and helped Democrats win their narrow Senate majority last year. Among those who found their transactions under federal scrutiny were both Republican senators from Georgia, David Perdue and Kelly Loeffler ([they both denied any wrongdoing](#)), who lost in special elections last January. The Democrat who defeated Perdue, Senator Jon Ossoff, is now leading a new push to ban members from trading individual stocks altogether.

“There’s widespread bipartisan disgust with America’s political class, and stock trading by members of Congress is egregious and offensive,” Ossoff told me last week.

Legislation that he’s introduced along with Senator Mark Kelly of Arizona

would require members of Congress, their spouses, and dependent children to either sell their individual stocks or place them in a blind trust. (A bipartisan companion bill was previously unveiled in the House.)

The proposal is, not surprisingly, popular with a public that loves to look down on its lawmakers: Nearly two-thirds of all respondents, including majorities of both Democrats and Republicans, backed the idea of banning members of Congress from trading stocks, according to a recent [poll conducted by Morning Consult](#). Yet the bill is likely to be least popular among the people who actually have to vote on it. If Congress has struggled in recent years to tackle the nation's most complex challenges, its track record of policing itself is arguably even worse. Republicans made little effort to pass ethics legislation when they last ran Washington, and although House Democrats did advance a major anti-corruption bill as part of its initial voting-rights push last year, they quickly jettisoned its major ethics provisions in a (thus far unsuccessful) bid to win passage in the Senate.

The proposed ban on stock trading by lawmakers has upended the expected ideological divide. A co-sponsor of the House measure is conservative Representative Chip Roy of Texas, a former top aide to Senator Ted Cruz. The bill has also won the backing of two groups that usually defend unfettered access to the free market, the Koch-funded Americans for Prosperity and FreedomWorks, which emerged from the Obama-era Tea Party. Carrying the libertarian flag instead is House Speaker Nancy Pelosi, whose husband, Paul Pelosi, has made millions in stock trades that have become fodder for amateur trackers [on social-media platforms such as Reddit and TikTok](#). "We're a free-market economy. [Members] should be able to participate in that," Pelosi [told reporters](#) earlier this month, sounding more like Ayn Rand than a San Francisco ["socialist."](#)

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The last significant ethics legislation to clear Congress was the STOCK Act a decade ago. Even that bill, however, passed only after party leaders watered down a tougher initial proposal, and within a year of its enactment, Congress quietly acted to roll back one of its key transparency provisions.

The need to regulate stock trading by lawmakers is obvious to the bill's supporters, who on this particular issue know well of what they speak. Members of Congress are privy to market-moving information before the general public on a near-daily basis. That is especially true in times of crisis, such as a major military buildup or the onset of a global pandemic, when the stock market is more volatile and lawmakers frequently receive classified briefings from senior government officials. They might not be able to discuss what they heard in public, but until the passage of the STOCK Act, it wasn't clearly illegal for them to make money off it. House and Senate votes are themselves occasionally market-moving events, and lawmakers are usually the first to know whether a measure will pass or fail. One of the authors of the STOCK Act, former Democratic Representative Brian Baird of Washington State, told me that in moments of dark humor during major floor votes, a colleague would joke to him (and he emphasized that he was indeed joking): "We could make some money off this vote, right?"

In 2012, the authors of the STOCK Act believed an outright ban on stock trades was "a bridge too far," Baird told me. But the pandemic-trading scandals propelled calls for new legislation, and more recent disclosures, including [a lengthy investigation by *Business Insider*](#), have given the push added momentum. So, too, has Pelosi's brush-off, which prompted the bill's backers to redouble their efforts. "I fervently disagree with her," Representative Abigail Spanberger of Virginia told me. Spanberger, a Democrat, first introduced legislation with Roy more than a year and a half ago. "There's many professions where there are limitations placed on what someone can do financially. This requirement is an absolutely reasonable

one for those of us who choose to enter this profession."

The proposals would allow members and their families to keep control of investments in diversified mutual or [index funds](#), U.S. Treasuries, and bonds. Kelly told me that in addition to preventing insider trading by lawmakers, requiring members to step back from active control of individual stocks would ensure that they aren't taking votes on legislation based on how it would impact them financially.

Adding to the pressure on Pelosi, House Minority Leader Kevin McCarthy has suggested that Republicans might implement a ban if they win back the majority this fall. Pelosi last week softened her stance, [telling reporters](#) that although she remained personally opposed to the proposal, "if members want to do that, I'm okay with that."

The developments over the past month have created a dynamic reminiscent of other successful drives for new congressional ethics laws, Craig Holman, a lobbyist for Public Citizen and a longtime government-reform advocate, told me. "The prospects are very good," he said. "Sometimes we have to embarrass Congress into doing the right thing, and it works once the public gets involved."

Yet the supporters of a ban on lawmaker stock trading still have a ways to go. Public support for a bill can mask broader private opposition, and the leaders of this most recent effort are mostly members with relatively little experience in Congress. The STOCK Act ultimately passed with near-unanimous votes, but Baird told me that during the years when he was first pitching the bill to colleagues, many took offense at the mere suggestion of impropriety. Others wanted their investments to remain private, and some just didn't want the added inconvenience of having to disclose them. "I thought naively that this would be such an obvious right thing to do that

when I raised it with people, they'd respond, 'Gosh, I didn't know that. We should fix it,'" Baird chuckled ruefully. "Well, the response was anything but." After the STOCK Act's passage, Baird said he found himself in an elevator with an aide to a high-ranking Democrat who didn't realize he was speaking with an author of the bill. "I gotta go home and fill out my effing paperwork for the goddamn STOCK Act," the staffer complained.

Kelly told me he didn't have much sympathy for members who opposed ethics legislation because of the hassle of complying with it. "If you don't want the hassle, find something else to do," he said. "There are plenty of folks who could do this job." His retort epitomized the challenges that Kelly and his allies face. They are asking their colleagues to vote for a bill that won't require sacrifice by their constituents, only by themselves. "Frankly, I don't mind whose feelings I hurt when I make that case," Ossoff said. "My colleagues need to hear it, and I think they are hearing it."