



Members of Congress increasingly receptive to stock trading ban

By Katherine Huggins
April 11, 2022 3:50 pm

Members of Congress may soon be barred from trading stocks while in office as bipartisan support for a stock trading ban continues to grow.

Across both sides of the aisle, more than 125 lawmakers have sponsored or co-sponsored at least one piece of legislation aiming to ban individual stock trading for members of Congress.

“The American people have doubts when they read studies that say members of Congress have stock portfolios that perform significantly better than the general public and wonder where they’re getting that information from,” Sen. Jeff Merkley (D-Ore.) pointed out during a press conference Thursday, emphasizing the importance of public confidence in the integrity of the lawmaking body.

Rep. Abigail Spanberger (D-Va.) said that members of Congress are in “positions of public trust,” and should “take proactive steps so that no one has even an inkling of doubt in their mind that we are not every day making a decision in the interest of the public trust that we have been granted by our constituents and not focused on our portfolios.”

A recent poll, conducted by the conservative advocacy group Convention of States Action, found that 76% of voters believe members of Congress have an “unfair advantage” in the stock market and only 5% of those surveyed said they approved of lawmakers trading while in office. Spanberger argued that even if no laws are being broken in terms of trading, “perception is what engages our constituents in our democracy, or makes them say I want no part of that politics.”

The push to ban members of Congress from trading stocks came in the wake of some lawmakers selling stock before the market plummeted due to COVID-19 in 2020.

The Justice Department investigated but did not charge Sen. Richard Burr (R-N.C.) for his pre-pandemic sales and also dropped probes of pre-pandemic stock sales by Sens. James M.

Inhofe (R-Okla.), Dianne Feinstein (D-Calif.) and then-Sen. Kelly Loeffler (R-Ga.). Burr is still under investigation by the Securities and Exchange Commission.

In an interview with OpenSecrets after the press conference, Spanberger said she does not think there is “mass corruption” but believes lawmakers have a certain level of access to non-secret information that the public may not.

She recounted telling her husband about an informal and non-secret meeting some members of Congress had with a CEO about the state of that industry, saying that she didn’t think much of it and none of the information shared was secret. But her husband “said if we were stock people, I would be dumping that stock right now.”

“And two weeks later, they tanked,” she said.

“There was nothing secretive about this meeting,” she said, adding moments later, “But this CEO would never sit around with a random assortment of Americans and speak as openly. He spoke that openly because we’re members of Congress — and that’s the difference.”

More than 20% of current U.S. lawmakers have sponsored or co-sponsored at least one piece of legislation that would ban — at least in part — lawmakers from trading stocks while in office.

Merkley, for example, introduced the Ban Conflicted Trading Act, which would ban members of Congress and senior staff from buying and selling stocks, most bonds and options contracts. And Spanberger introduced the bipartisan TRUST in Congress Act, which has gained 48 Democratic and 11 Republican co-sponsors.

While Merkley’s bill has no Republican co-sponsors in the Senate, its House counterpart has attracted 55 Democratic co-sponsors and three Republican co-sponsors: Reps. Michael Cloud (R-Texas), Matt Gaetz (R-Fla.) and Tom Rice (R-S.C.).

At least 10 bills across the House and Senate attempt to address this issue, including the bicameral Bipartisan Ban on Congressional Stock Ownership Act of 2022 and Sen. Jon Ossoff’s (D-Ga.) Ban Congressional Stock Trading Act.

Sen. Josh Hawley (R-Mo.) introduced the Banning Insider Trading in Congress Act after talks with Ossoff’s office fizzled, Axios reported.

Lawmakers are divided about certain details of the measure, including whether the legislation should extend to spouses, dependent children and/or senior congressional staff.

“There is consensus around the basic, fundamental principle that members of Congress shouldn’t be serving their stock portfolios, they should be serving the people,” said Rep. Joe Neguse (D-Colo.) at the press conference. “I think we’ll have robust debate on the finer points.”

Neither House Speaker Nancy Pelosi (D-Calif.) nor House Minority Leader Kevin McCarthy (R-Calif.) have signed onto stock trading ban legislation, but both said they would be open to a possible ban.

In January, several outlets reported that McCarthy said he would consider banning lawmakers from holding or trading stock if Republicans won the House majority in November.

Pelosi previously opposed the proposal, saying in December that “we are a free-market economy” and members of Congress “should be able to participate in that.”

She has since changed her tune, saying in February, “I do believe in the integrity of people in public service. I want the public to have that understanding. We have to do this to deter something that we see as a problem...And if that’s what the members want to do, then that’s what we will do.”

The heightened interest in a stock trading ban comes weeks after an investigation by *Insider* found that since 2019, 59 members of Congress have violated the STOCK Act, which was designed to prevent insider trading and increase transparency.

Of those 59 lawmakers, 28 were Democrats and 31 were Republicans, “making this a bipartisan issue that requires a bipartisan response,” noted Rep. Rodney Davis (R-Ill.), the top Republican on the House Administration Committee, during Thursday’s hearing.

Davis added that he is “confident that the majority if not all of them weren’t malicious, but inadvertent,” which points to a lack of education about STOCK Act compliance for incoming members.

Committee Chair Zoe Lofgren (D-Calif.) agreed on Thursday that noncompliance has been an issue, though she said it is “more likely somebody just messed up” than that someone is trying to hide something, and proposed a potential phasing of penalties for individuals given that currently, “it’s the same amount of penalty whether it’s a \$100 trade or a \$1 billion trade.”

Some of the members listed by *Insider* have said they were unaware of trades their spouse made or were late on paperwork because of a death in their family.

Seven of the 59 members of Congress accused of failing to comply with STOCK Act rules support a stock trading ban and have signed onto at least one of the bills.

Despite the proposal having some Republican support, GOP members of the House Administration Committee appeared reluctant to institute a total ban during Thursday’s hearing on the topic.

“We can’t change behavior...If we enact a law that prohibits members of Congress from owning or trading stocks, it will still happen by bad players,” said Rep. Barry Loudermilk (R-Ga.). Americans have the “right and freedom to participate in a free and fair market economy,” he continued. “It’s not going to make a difference to me personally, but it does make a difference to me as an American citizen.”

Davis also does not trade stocks, but believes proposals that involve lawmakers placing their stock assets into a qualified blind trust would force non-wealthy lawmakers to divest, noting that at LPL Financial the minimum amount required to open a qualified blind trust is \$500,000.

“For example, most financial firms won’t even take on a client for a blind trust, unless they meet certain asset requirements and activity requirements,” he said. “I don’t meet either of those requirements today.”

During the hearing, Davis stressed potential impacts on middle class members of Congress, saying that forcing them “to divest ownership portions of a family farm or to divest ownership in a business that their spouse may be a part of, their dependent children...is untenable.”

Some other lawmakers on the committee inquired about the efficacy of measures that stop short of a total ban, while others expressed concerns about increasing compliance with the current rules set under the STOCK Act.

Rep. Bryan Steil (R-Wis.) questioned whether requiring advanced disclosure of stock trades days before each sale or a ban on “sophisticated trading options,” such as shorting stock, could increase public confidence.

Donald Sherman, the senior vice president and chief counsel of Citizens for Responsibility and Ethics in Washington, told the House panel that “a ban is necessary because unlike other officials in other branches of government, recusal is not a viable option for members of Congress.”

Another witness — the Cato Institute’s director of financial regulation studies, Jennifer Schulp — disagreed about the merits of a ban, saying that “such measures are too broad for preventing insider trading and too narrow to effectively address the question of financial conflicts of interests.”

Schulp argued that increasing transparency through disclosure is a better solution, and that banning stock trading for members of Congress could decrease the “quality of representation.”

“Seeking to eliminate a particular conflict such as trading individual stocks may have unintended effects on the quality of representation that voters receive either by discouraging some from running for office or by decreasing the connectedness between representatives and the impact of their decisions,” Schulp said, noting that enhancing the STOCK Act could provide further transparency.

Sen. Tommy Tuberville (R-Ala.) echoed Schulp’s concerns in February, calling a potential ban “ridiculous” and arguing that he thinks it “would really cut back on the amount of people that would want to come up here and serve.”

Tuberville has previously violated STOCK Act disclosure requirements and questions were raised about potential conflicts of interest regarding trades he made during the final weeks of infrastructure bill negotiations.

Executive branch employees and their families have long been subject to a conflict of interest law that Congress exempted itself from in 1962, noted by one witness, Indiana University law professor Donna Nagy in her written testimony.

Stock trading bans are gaining steam across the federal government, with the policymaking Federal Open Market Committee approving rules prohibiting stock and cryptocurrency trading for Federal Reserve officials.

The rules “aim to support public confidence in the impartiality and integrity of the Committee’s work by guarding against even the appearance of any conflict of interest,” the statement announcing the new rules said.

Lawmakers are also pushing for stock trading reforms and increased transparency in the judicial branch, following a *Wall Street Journal* investigation that found more than 130 federal judges failed to recuse themselves from 685 court cases involving companies in which they or their family owned stock since 2010.

Spanberger told OpenSecrets that a stock trading ban should not be enough to dissuade candidates from running for office, and if it does, “maybe you should find work elsewhere.”

“Certain jobs, if you choose to have them, come with certain parameters, certain restrictions, certain obligations,” she said. “And notably if someone chooses to work in the executive branch...they have to do this. Are we losing, hemorrhaging good Americans who won’t work in the executive branch because, oh my God, they can’t buy and sell and trade stocks?”

“I think there are people who would make a choice not to run for Congress if it impacted their stock portfolio,” Spanberger said. “But if that is enough of a reason to not run for Congress...maybe it’s one more element of vetting that I am personally quite okay with.”