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Unintended consequences plague bill to bar Congress from insider trading

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Bills to prohibit lawmakers from trading stocks while in office have been circulating throughout the past year — many with bipartisan support. Backers on both sides of the aisle seem to think that stock trading by members is part of why Congress' trust and approval ratings are dismal and that outlawing the practice could help revive them.

House Speaker Nancy Pelosi, D-Calif., had suggested the House would consider such a bill before the end of September, specifically the Combatting Financial Conflicts of Interest in Government Act, which was released last week and would require lawmakers to either divest their stock holdings or place them into blind trusts. Days later, House Majority Leader Steny Hoyer, D.-Md., announced the bill would wait until after the November midterm elections.

Putting the idea on hold was a good decision. Now let's hope it's buried for good.

It's understandable that banning lawmaker trading polls well. The voting public is routinely confronted with stories about trading that raise questions about whether lawmakers are using their positions for financial gain. But prohibiting lawmakers from trading stocks isn't the right response.

Despite headlines to the contrary, there is little evidence that unlawful insider trading — misusing nonpublic information to trade stocks — is widespread on Capitol Hill. Recent research disseminated by the nonpartisan National Bureau of Economic Research found that lawmakers reap no outsize return on their stock investments, including those made in areas in which lawmakers hold committee assignments.

Furthermore, potential conflicts of interest also exist in fund investments, real estate transactions and other business interests of lawmakers, their families and their staffs. Focusing only on stock ownership gives an incomplete picture, and it's hard to imagine that prohibiting stock trading alone would do much to move the needle on the crisis of voters' confidence in Congress. At the same time, prohibiting lawmakers from trading stocks might carry unintended consequences.

For one, it might limit the pool of people who are willing to run for office. A trading ban might require people to upend their financial plans while serving terms as short as two years. This can have significant tax consequences, including capital gains taxes to be paid on earnings, unless lawmakers are afforded special tax treatment.

And there's no guarantee officeholders can rebuild desired portfolios after serving; for example, a lawmaker who had stock holdings from a previous job might no longer be able to acquire a similar investment. It's not just investment portfolios, either. For spouses who make their livings investing, restricting family members' trading could require employment changes.

A trading ban wouldn't affect just those who are already wealthy. Recent innovations in market access have made retail investing easier for many people. This has brought a broader segment of the U.S. population into the markets, including those who are less wealthy, younger and more racially diverse. Banning trading might limit the interest of some of these new investors in running for office or cause them to choose to no longer invest — neither of which is a good outcome.

Similar problems can be found with including cryptocurrencies in the trading ban, as the proposed bill would. Investment in cryptocurrencies has been disproportionately popular with underrepresented populations, and there is no clear investment substitute for crypto.

Moreover, because many cryptocurrencies are intended to be used as a method of payment, banning crypto would prevent lawmakers from using it to send remittances or make purchases. As crypto grows in popularity, preventing its use would have an even greater effect on a person's ability to participate in the economy than banning stock trading would.

Permitting assets to be placed in blind trusts wouldn't be a panacea, either. Blind trusts can be expensive, and they might not be an economical alternative for lawmakers with modest holdings. Even if costs were low, blind trusts would decrease a ban's potential benefits: Maintaining the "blindness" requires secrecy of transactions from a lawmaker *and* the public. Trades made at the discretion of a lawmaker's adviser are currently subject to public scrutiny, but a blind trust — which isn't foolproof — places such trades in the shadows.

Instead of banning trading, a plan to enhance transparency and lawmaker accountability could help avoid these costs while putting the decisions about whether conduct crosses an ethical line in voters' hands. Rules already exist to provide transparency in stock transactions, but they haven't been vigorously applied, and they could be improved upon.

The proposed financial conflicts bill gives a nod to some of the principles that should apply to stock transaction reporting, including requiring lawmakers to disclose their transactions more promptly, with more granularity and in a legible format. The bill would also subject lawmakers who failed to do so to meaningful penalties, including public disclosure of their noncompliance.

In addition, disclosed information should be more easily accessible. The current electronic access systems, especially for the House, are difficult to use and arguably don't meet the current law's requirement that the public can "search, sort, and download" this material.

Promoting transparency over prohibitions doesn't bless the status quo. Lawmakers' trades should be subject to critique, and it's no surprise that what Americans have seen — made possible by existing transparency rules — has displeased many. But rather than impose hefty costs on legislators and candidates, we should give voters more information so they can hold their elected representatives accountable.

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