



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

October 18, 2021

Omar Ashmawy
Chief Counsel
Office of Congressional Ethics
U.S. House of Representatives
P.O. Box 895
Washington, DC 20515-0895

Email: oce@mail.house.gov

Dear Mr. Ashmawy,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Congressional Ethics immediately investigate New York Representative Brian Higgins for violating federal law and House ethics rules.

Federal law and House ethics rules require House Members to disclose their financial information to the public.¹ The disclosure requirements are an integral part of an ethical and transparent government: accurate and timely filing is the only method for citizens to determine whether Members have conflicts of interest or are wrongfully profiting from their position.² Under the public disclosure requirements, each Member must file an annual financial disclosure report that provides a “full and complete” statement of the Member’s assets, debts, and income.³ In addition to the annual report, a Member must file a periodic report to disclose any financial transaction that exceeds \$1,000 within 30 days of notice of the transaction (but never more than 45 days after the transaction).⁴ This federal law is extremely important, thus it is directly

¹ 5 U.S.C. app 4 sec. 101-111 (disclosure requirements); sec. 102(a)(5) (requirement for disclosure of financial transactions over \$1,000); House Rule 26.

² It is a foundational principal and embodied in numerous laws and ethics rules that Members “should not in any way use their office for private gain.” House Ethics Manual, at 1; *see also* House Ethics Manual, at 123-24 (Members cannot use official resources for any campaign or political purpose).

³ 5 U.S.C. app 4 sec. 101-111 (disclosure requirements); sec. 102(a)(5) (requirement for disclosure of financial transactions over \$1,000); House Rule 26.

⁴ *Id.*

incorporated into House rules and Members are specifically informed of the law.⁵ Each Member has an affirmative duty to ensure compliance with the law. There is no excuse for inaccurate, incomplete, or late filings, and every violation has consequences.⁶

Contrary to this legal requirement, it was recently reported that Representative Higgins failed to properly disclose three stock transactions valued at up to \$115,000.⁷ “In September 2020, he sold up to a combined \$65,000 worth of stock in Micron Inc., a computer-data-storage company, and Sphere 3D Corp., a software-development company. Higgins also purchased up to \$50,000 in stock for Nvidia Corp., a computer-system company. But Higgins, who represents a largely urban district in western New York and sits on the powerful House Budget and House Ways and Means committees, did not disclose these financial transactions until August, about 11 months past a federal deadline.”⁸ Additionally, Higgins disclosed the transactions on his Personal Financial Disclosure as valued at up to \$115,000, but on the two Periodic Transaction Reports he filed on the same day, the transactions appear to be valued at up to \$150,000.⁹ This discrepancy should further merit an investigation.

This is an especially egregious case because not only did Rep. Higgins apparently fail to report his stock trades as required by law, but he was also fully aware of his duty to do so. Higgins

⁵ U.S. House of Reps. Rules (2019), r. 26, cl.2 (“For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.”); U.S. House of Reps. Comm. on Ethics 116th Cong., *Memo Re. Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement*, at 3 (June 11, 2020), available at: https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.11.2020%20Final.pdf.

The law is both well publicized and part of ethics training for Members of Congress. *See, e.g.* U.S. House of Reps. Comm. on Ethics, *Training*, <https://ethics.house.gov/training>.

⁶ The Ethics in Government Act does not allow Members to break the law without consequence. *See, e.g.*, 5 U.S.C. app 4 sec. 104(a)(1) (providing for a civil penalty not to exceed \$50,000); sec. 104(a)(2) (making it unlawful for any person to knowingly and willfully fail to file or report any information required under section 102, with penalties of up to \$50,000 and imprisonment of not more than one year); sec. 104(d) (providing for a late filing fee of \$200); *see also* Committee on Ethics, U.S. House of Rep., available at <https://ethics.house.gov/financial-disclosure/general-information-about-financial-disclosure> (“A \$200 late filing fee shall be assessed against any individual who files more than 30 days after the due date of a report or amendment (or the due date of any extension).”).

⁷ Camila DeChalus, *Democratic Rep. Brian Higgins Of New York Appears To Have Violated A Conflict-Of-Interest Law He Cosponsored*, Business Insider, Sept. 30, 2021, available at: <https://www.businessinsider.com/democratic-brian-higgins-new-york-violate-stock-act-law-2021-9> (attached as Exhibit A). Brian Higgins, Personal Financial Disclosure, Clerk Of The House Of Representatives, Filed Aug. 11, 2021, available at: https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10041409.pdf.

⁸ *Id.*

⁹ Brian Higgins, Personal Financial Disclosure, Clerk Of The House Of Representatives, Filed Aug. 11, 2021, available at: https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10041409.pdf. Brian Higgins, Periodic Transaction Report, Clerk Of The House Of Representatives, Filed Aug. 11, 2021, available at: https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2021/20019288.pdf. Brian Higgins, Periodic Transaction Report, Clerk Of The House Of Representatives, Filed Aug. 11, 2021, available at: https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2021/20019289.pdf.

himself cosponsored the financial disclosure law that he apparently violated.¹⁰ This law is extremely important and it must be strictly enforced to determine whether a Member has used nonpublic information to profit, which Higgins recognized when he spoke out about another Member violating the law.¹¹ Rep. Higgins cosponsored the law, spoke out about other Members violating the law, and was on a committee where he could have access to significant official information—yet he apparently failed to disclose his stock transactions on time and ultimately did so with discrepancies.

It is very concerning when the people who make the rules can't even follow their own rules. The failure of Members to follow the most basic ethics rules they created leads to public distrust in our elected officials as a whole.¹² Moreover, the lack of any consequence for Members who break the law leads to the public perception that the laws do not apply equally to all. The OCE must act to ensure compliance with the most basic ethics requirements and to maintain the public's trust. We request the OCE investigate Rep. Higgins's stock trades and apparent failure to file the required timely and accurate disclosures, and impose any appropriate sanctions including fines and penalties.

To the best of my knowledge and ability, all evidence submitted was not obtained in violation of any law, rule, or regulation. Further, I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

Sincerely,

/s/ Kendra Arnold

Kendra Arnold

Executive Director

Foundation for Accountability & Civic Trust

¹⁰ “Higgins himself cosponsored that law, known as the Stop Trading on Congressional Knowledge Act of 2012, or the STOCK Act.” *Id.*

¹¹ Members may obtain nonpublic information about a company or economic sector during the course of the official duties. U.S. House of Reps. Comm. on Ethics 116th Cong., *Memo Re. Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement*, at 3 (June 11, 2020); Camila DeChalus, *Democratic Rep. Brian Higgins Of New York Appears To Have Violated A Conflict-Of-Interest Law He Cosponsored*, Business Insider, Sept. 30, 2021.

¹² See, e.g., Tim Mak, *TikTokers Are Trading Stocks By Copying What Members Of Congress Do*, NPR, Sept. 21, 2021, available at: <https://www.npr.org/2021/09/21/1039313011/tiktokers-are-trading-stocks-by-watching-what-members-of-congress-do> (discussing that a portion of the public has lost trust in government to the extent they believe Members' stock trades are based on corruption and it would be financially beneficial to copy the Members' trades).

Democratic Rep. Brian Higgins Of New York Appears To Have Violated A Conflict-Of-Interest Law He Cosponsored

[Business Insider](#) | [Camila DeChalus](#) | September 30, 2021
[View Source](#)

Democratic Rep. Brian Higgins waited more than 11 months to disclose that he made three stock transactions worth as much as \$115,000 — an apparent violation of a federal transparency and conflict-of-interest law, according to Insider's review of [a financial-disclosure document](#).

Higgins himself [cosponsored that law](#), known as the Stop Trading on Congressional Knowledge Act of 2012, or the [STOCK Act](#).

In September 2020, he sold up to a combined \$65,000 worth of stock in Micron Inc., a computer-data-storage company, and Sphere 3D Corp., a software-development company.

Higgins also purchased up to \$50,000 in stock for Nvidia Corp., a computer-system company.

But Higgins, who represents a largely urban district in western New York and sits on the powerful House Budget and House Ways and Means committees, did not disclose these financial transactions until August, about 11 months past a federal deadline.

The STOCK Act mandates that federal lawmakers disclose stock trades within 30 to 45 days after the transactions happen, depending on the type of trade. Those that violate the law may be subjected to a \$200 fine, at minimum.

Higgins did not respond to Insider's multiple requests for comment.

In 2018, Higgins did have strong words for Rep. Chris Collins, a fellow western New York congress member and a Republican, when the FBI arrested Collins and charged him in one of Congress' most notable stock-related scandals of recent years: a scheme to commit insider trading related to securities in an Australian biotechnology company.

"The allegations included in the indictment against Rep. Chris Collins can be summed up in one word: shameful," Higgins [wrote at the time](#). "These charges, including insider trading, conspiracy to commit fraud, and lying to federal officials, laid out by professionals within the Justice Department and FBI are backed up by comprehensive evidence of these very serious offenses. I am confident that, in due course, justice will be served."

Collins pleaded guilty and briefly served time in federal prison before then-President Donald Trump [pardoned him](#) in December.

Some legal experts have been calling for more enforcement measures against lawmakers who violate the STOCK act, whether the transgression is big or small.

"If not, we're not penalizing these violations in such a way that acts as an actual deterrent. ... Then, we need to figure out a way to restrict members of Congress from trading stock in a way that they have been," Delaney Marsco, a senior legal counsel at the nonpartisan Campaign Legal Center, said.

No matter if these stock transactions are small or big, the public has the right to know about them, Marsco told Insider.

"The reason we have this disclosure is because we have a right to know what members of Congress are trading and when," she said. "And when these disclosures are just delayed for so long, it just defeats the purpose of the law."

Growing trend of lawmakers violating STOCK act

Higgins joins a growing roster of members of Congress who have failed to disclose their stock transactions in compliance with the law.

Insider and other news organizations have this year [identified 35 members of Congress, including Higgins](#), who have failed to properly report their financial trades.

They include:

- Sen. [Dianne Feinstein](#), a Democrat of California
- Sen. [Tommy Tuberville](#), a Republican of Alabama
- Sen. [Rand Paul](#), a Republican of Kentucky
- Sen. [Mark Kelly](#), a Democrat of Arizona
- Rep. [Tom Malinowski](#), a Democrat of New Jersey
- Rep. [Pat Fallon](#), a Republican of Texas
- Rep. [Katherine Clark](#), a Democrat of Massachusetts
- Rep. [Diana Harshbarger](#), a Republican of Tennessee
- Rep. [Dan Crenshaw](#), a Republican of Texas
- Rep. [Sean Patrick Maloney](#), a Democrat of New York
- Rep. [Brian Mast](#), a Republican of Florida
- Rep. [Blake Moore](#), a Republican of Utah
- Rep. [Debbie Wasserman Schultz](#), a Democrat of Florida
- Rep. [Kathy Castor](#), a Democrat of Florida
- Rep. [Lori Trahan](#), a Democrat of Massachusetts
- Rep. [Steve Chabot](#), a Republican of Ohio
- Rep. [Cheri Bustos](#), a Democrat of Illinois
- Rep. [August Pfluger](#), a Republican of Texas
- Rep. [Ed Perlmutter](#), a Democrat of Colorado
- Rep. [Chris Jacobs](#), a Republican of New York
- Rep. [Bobby Scott](#), a Democrat of Virginia
- Rep. [Susie Lee](#), a Democrat from Nevada
- Rep. [Kevin Hern](#), a Republican from Oklahoma
- Rep. [Thomas Suozzi](#), a Democrat from New York
- Rep. [Cindy Axne](#), a Democrat from Iowa
- Rep. [Warren Davidson](#), a Republican from Ohio
- Rep. [Lance Gooden](#), a Republican from Texas
- Del. [Michael San Nicolas](#), a Democrat from Guam
- Rep. [Roger Williams](#), a Republican from Texas
- Rep. [Dan Meuser](#), a Republican from Pennsylvania
- Rep. [John Rutherford](#), a Republican of Florida
- Rep. [Rick Allen](#), a Republican of Georgia
- Rep. [Victoria Spartz](#), a Republican of Indiana
- Rep. [Mike Kelly](#), a Republican of Pennsylvania

Some federal lawmakers voluntarily abstain from trading stocks. Others trade only in bonds, mutual funds, exchange-traded funds, and other garden-variety investments.

Members of Congress who want to formally disassociate themselves from their personal investments may ask their chamber's ethics committee to approve the creation of a qualified blind trust.

Sen. [Jon Ossoff](#), a Democrat from Georgia, and Rep. [Tom Malinowski](#), a Democrat from New Jersey whose stock trades the House Ethics Committee is investigating, have this year both created qualified blind trusts for their assets.

The [Ban Conflicted Trading Act](#), sponsored in the Senate by Sen. Jeff Merkley, a Democrat of Oregon, and in the House by Rep. Raja Krishnamoorthi, a Democrat of Illinois, would bar members of Congress from trading individual stocks.

Sen. Elizabeth Warren, a Massachusetts Democrat, and Rep. Pramila Jayapal, a Washington Democrat, have told Insider they plan to file [separate bills](#) also directed at curtailing lawmakers' stock trades.