



August 19, 2021

Chairman Mike Barnes
Co-Chairman Paul Vinovich
Office of Congressional Ethics
425 3rd Street, SW Suite 1110
Washington, DC 20024

Sent via email (oce@mail.house.gov)

Dear Chairman Barnes and Co-Chairman Vinovich:

Campaign Legal Center (“CLC”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate Rep. Diane Harshbarger for a possible violation of the STOCK Act and House rules. From January to June of 2021, Rep. Harshbarger made more than 700 stock and other securities trades¹ with a total value ranging from approximately \$728,000 to \$10.9 million.² Rep. Harshbarger did not timely file periodic transaction reports (“PTRs”), which are required for each transaction pursuant to the STOCK Act and House rules. An OCE investigation is necessary to determine whether her failure to file was knowing and willful.

The STOCK Act does not excuse late filings, yet members of Congress are avoiding investigations into the nature of their stock trades by not disclosing the trades, claiming that they were unaware of the transactions, and paying \$200 for a late filing fee. The harm is that this trend could quickly defeat one of the purposes of the STOCK Act, which is real-time

¹ The Honorable Diane Harshbarger, Periodic Transaction Report, Clerk of the United States House of Representatives (filed Aug. 16, 2021), https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2021/8218296.pdf (attached as Exhibit A); Dave Levinthal, *Republican Rep. Diana Harshbarger failed to properly disclose more than 700 stock trades worth as much as \$10.9 million in violation of federal transparency law*, INSIDER (Aug. 19, 2021), <https://www.businessinsider.com/diana-harshbarger-congress-stocks-violation-stock-act-trades-tennessee-2021-8> (attached as Exhibit B).

² Rep. Harshbarger’s periodic transaction report, *supra* note 1; Levinthal, *supra* note 1.

disclosure of potential conflicts of interest. If members are not held accountable for late filings of PTRs, many may simply wait until their annual financial disclosures to reveal stock trades and pay nominal late fees, thereby circumventing the STOCK Act.

When members of Congress trade individual stocks and fail to disclose those trades, they break the law and diminish the public's trust in government. The recent prevalence of STOCK Act violations in the House shows that merely the threat of a fine is not deterring members of Congress from breaking the law; real accountability is necessary. As members of Congress craft laws that directly impact the lives of all Americans, the public must be able to trust that representatives are acting in the public's interest, and not in their own financial interest.

The STOCK Act and House Rules Require Members of Congress to Timely Report All Individual Stock Transactions

The STOCK Act amended the Ethics in Government Act of 1978 (“EIGA”) to require members of Congress to report their individual stock transactions no “later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction”³

House rules incorporate these reporting requirements. House Rule 26, clause 2 states, “[f]or 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.”⁴

The House Committee on Ethics trains and reminds members of Congress annually in writing of the consequences of failing to file PTRs. Specifically, the Committee on Ethics advises:

“[e]ach Member, officer, and senior staffer is responsible for the completeness and accuracy of the information contained in the individual's PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a statement or fails to file a statement required by the EIGA. The maximum

³ P.L. 112-105, Section 6; 5 U.S.C. App. 4 § 103(l).

⁴ RULES OF THE HOUSE OF REPRESENTATIVES OF THE U.S. 116TH CONG. (2019), Rule 26, cl. 2.

civil penalty is \$61,585. The maximum criminal penalty is up to one year in prison and a fine of up to \$61,585.”⁵

In addition, the Committee on Ethics advises that 18 U.S.C. § 1001 is applicable to PTRs. “That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.”⁶

Rep. Harshbarger May Have Knowingly Violated the STOCK Act by Failing to File Timely Periodic Transaction Reports for More than 700 Stock Trades

For nearly six months, Rep. Harshbarger and her spouse traded securities frequently, but did not file timely PTRs as required. In the first six months of 2021, Rep. Harshbarger made more than 700 trades with a total value ranging from \$728,000 to \$10.9 million.⁷ She disclosed these transactions in a PTR in August of 2021. Some trades were not reported until over seven months had passed after the transaction occurred.⁸

Rep. Harshbarger’s trade activity occurred over several months and with significant frequency and volume. With regard to her failure to timely report this trading activity, a spokesperson for Rep. Harshbarger stated that counsel “established a system and protocols with the congresswoman’s personal financial planner who provided assurance of familiarity and experience with all processes and requirements.”⁹ Her “financial advisor did not follow the established system and protocols. When the financial advisors’ gross oversight was discovered, it became immediately clear that he was not familiar, and his error caused the congresswoman not to meet reporting requirements within the specified timeframe.”¹⁰

⁵ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS 116TH CONG., Memorandum from Committee on Ethics for All Members, Officers, and Employees Regarding Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement at 3 (June 11, 2020), https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.1.2020%20Final.pdf.

⁶ *Id.*

⁷ Rep. Harshbarger’s periodic transaction report, *supra* note 1.

⁸ Her Aug. 16, 2021 PTR includes trades from July 2021 that are timely disclosed within the STOCK Act’s required time frame. This complaint is not alleging any wrongdoing as to the timeliness of the reporting for those transactions that occurred in July 2021.

⁹ Levinthal, *supra* note 1.

¹⁰ *Id.*

Rep. Harshbarger’s explanation raises more questions than it answers. She appears to concede that she had a protocol in place to comply with the STOCK Act because: 1) she was familiar with the legal requirements; and 2) the complexity of the frequent trades by her financial advisor required such a protocol. As a result, it is unclear why it would take nearly eight months for Rep. Harshbarger to realize that she had not signed and submitted any PTRs pursuant to the protocol implemented for the frequent stock trades.

Indeed, there are additional clear facts establishing that Rep. Harshbarger was aware of the need to file PTRs. *First*, according to her PTR, Rep. Harshbarger was promptly notified of the trades after they occurred, so ignorance of the transactions or “financial advisors’ gross oversight” are not plausible excuses for failing to timely file PTRs.¹¹

Second, Rep. Harshbarger was required to attend mandatory ethics training for new members of Congress in 2021.¹² This training includes discussion of financial disclosures and the STOCK Act. Members of Congress are required to complete the ethics training within 60 days of their start date,¹³ meaning Rep. Harshbarger would have been required to complete the training no later than March 4, 2021.¹⁴ The Committee on Ethics does not grant extensions for completing ethics training.¹⁵ It therefore seems unlikely that Rep. Harshbarger would not have been aware of the requirements to know of and disclose the trades.

For the foregoing reasons, there is no evidence supporting an assumption that she was not familiar with the requirement and had not received any training.

An investigation is needed to determine if facts suggest that Rep. Harshbarger could have failed to disclose the trades to avoid public scrutiny of the nature of her trades. The trades Rep. Harshbarger failed to report include the purchase and sale of several telecommunications and technology companies, including T-Mobile, Apple, Motorola Solutions, Citrix and Alphabet.¹⁶ These trades occurred while she was a member of the House Subcommittee on Cybersecurity, Infrastructure Protection & Innovation within the Committee on Homeland Security. Based on publicly available

¹¹ Rep. Harshbarger’s periodic transaction report, *supra* note 1.

¹² U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *Training*, <https://ethics.house.gov/training>.

¹³ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, <https://ethics.house.gov/legislation/schedule/faqs-about-training>.

¹⁴ Rep. Harshbarger’s first day in office was Jan. 3, 2021.

¹⁵ U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, *supra* note 11.

¹⁶ *Id*; Rep. Harshbarger’s periodic transaction report, *supra* note 1.

information, it is unclear whether one reason for the late filings was an attempt to avoid scrutiny of trades connected with non-public information or with potential conflicts of interest.

Rep. Harshbarger likely knew of the public backlash suffered by those who disclosed stock trades. High-profile insider trading allegations engulfed several senators in March 2020 and became widely publicized.¹⁷ These allegations of STOCK Act violations were all based on information disclosed in PTRs. Rep. Harshbarger's immediate predecessor, Rep. Phil Roe, also faced scrutiny for his stock trades during the early months of the pandemic.¹⁸ Later in 2020, another scandal involving STOCK Act violations came to light: Rep. Donna Shalala failed to file PTRs for numerous transactions.¹⁹ Considering that the requirement for PTRs in Congress was headline news throughout 2020, it seems likely she was well aware of the potential scrutiny of stock trades disclosed in PTRs.

Rep. Harshbarger cannot excuse her failure to report with a claim that it she was unfamiliar with the financial disclosure requirements. An OCE preliminary review can gather information to determine whether Rep. Harshbarger knowingly violated the STOCK Act.

Conclusion

The STOCK Act requires members of Congress to timely file PTRs for any individual stock trades.²⁰ Based on the available facts, there is probable

¹⁷ See e.g., Aruna Viswanatha & Dave Michaels, *Justice Department Investigating Lawmakers for Possible Insider Trading*, WALL ST. J (Mar. 31, 2020), https://www.wsj.com/articles/justice-department-investigating-lawmakers-for-possible-insider-trading-11585586365?mod=article_inline.

¹⁸ Jeff Keeling & Blake Lipton, *Roe's stock trades raise eyebrows after paper's investigation*, WJLH (May 27, 2020), <https://www.wjhl.com/news/local/roe-stock-trades-raise-eyebrows-after-papers-investigation/>.

¹⁹ Alex Daugherty, *Donna Shalala, again, failed to disclose stock sales in violation of federal law*, MIAMI HERALD (Sept. 28, 2020), <https://www.miamiherald.com/news/politics-government/article246072375.html>. Rep. Shalala reportedly paid a \$1,200 fine after describing the omission as the result of trades made to establish a blind trust in coordination with the Committee on Ethics. In contrast, the current evidence does not suggest that Rep. Harshbarger's failure to report should only result in a small fine because she does not have a blind trust and has not stated that she made trades in connection with advice from the Committee on Ethics.

²⁰ P.L. 112-105, *supra* note 3; see U.S. HOUSE COMM. ON ETHICS, Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports Calendar Year 2019 at 41, *available at* <https://ethics.house.gov/sites/ethics.house.gov/files/documents/CY%202019%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs.pdf> (Stating that the relevant factor for disclosure is ownership of the stock: "In general, you must report on a PTR each purchase, sale, or exchange involving stocks, bonds, commodities futures, or other

cause to believe that Rep. Harshbarger was aware of this requirement, and her failure to timely file the transaction reports violates the STOCK Act.

CLC respectfully requests that OCE open a preliminary review to determine whether Rep. Harshbarger's nondisclosure was an intentional violation of the STOCK Act and House rules.

We acknowledge that 18 U.S.C. § 1001 applies to the information provided.

Sincerely,

_____/s/_____
Kedric L. Payne
General Counsel and Senior Director,
Ethics

_____/s/_____
Delaney N. Marsco
Senior Legal Counsel, Ethics

securities **owned wholly or in part by you**, your spouse, or your dependent child when the amount of the transaction exceeds \$1,000.”) (emphasis added).

Exhibit A

**HAND
DELIVERED** Page 1 of ____

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OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

(For Official Use Only)

A \$200 penalty shall be assessed against anyone who files more than 30 days late.

[illegible]

UNITED STATES HOUSE OF REPRESENTATIVES

NAME: Diana Harshbarger Page of

Periodic Transaction Report

FULL ASSET NAME		TYPE OF TRANS-ACTION				DATE OF TRANS-ACTION	DATE NOTIFIED OF TRANS-ACTION	AMOUNT OF TRANSACTION										
								A	B	C	D	E	F	G	H	I	J	K
SP DC JT	Provide full name, not ticker symbol.	Purchase	Sale	Partial Sale	Exchange	(MM/DD/YY)	(MM/DD/YY)	\$1,001- \$15,000	\$15,001- \$50,000	\$50,001- \$100,000	\$100,001- \$250,000	\$250,001- \$500,000	\$500,001- \$1,000,000	\$1,000,001- \$5,000,000	\$5,000,001- \$25,000,000	\$25,000,001- \$50,000,000	Over \$50,000,000	Transaction in a Spouse or Dependent Child Asset over \$1,000,000
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NOTE NUMBER	FILER NOTES (optional)

Name: DIANA LYNN HARSHEBARGER

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Exhibit B

US MARKETS OPEN In the news

▲ Dow Jones	▼ Nasdaq	▼ S&P 500	▲ TSLA	▲ FB	▲ BABA
-0.34%	+0.05%	0%	-2.06%	-0.23%	-7.21%



INSIDER



Republican Rep. Diana Harshbarger failed to properly disclose more than 700 stock trades worth as much as \$10.9 million in violation of federal transparency law

Dave Levinthal 2 minutes ago



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Rep. Diana Harshbarger, a Republican from Tennessee, is seen during a group photo with freshmen members of the House Republican Conference on the House steps of the Capitol on Monday, January 4, 2021. Tom Williams/CQ-Roll Call, Inc via Getty Images

Harshbarger disclosed hundreds of stock trades weeks or months after a federal deadline.

The tardy trades could invite an ethics investigation and fine.

A Harshbarger aide said the congresswoman "accepts full responsibility."

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10 Things in Politics: The latest in politics & the economy

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The Harshbargers also bought or sold stock in Johnson & Johnson, a leading COVID-19 vaccine maker, and Regeneron Pharmaceuticals, which manufactures a leading COVID-19 treatment involving monoclonal antibodies.

JT		Pure	S	Partial	Exec			\$1,001- \$15,000	\$15,001- \$50,000	\$50,001- \$100,000	\$100,001- \$250,000	\$250,001- \$500,000	\$500,001- \$1,000,000	\$1,000,001- \$5,000,000	\$5,000,001- \$25,000,000	\$25,000,001- \$50,000,000	Over \$50,000,000	Transactions in Dependent Cell over \$1,000,000
JT	Example: Mega Corp. Common Stock		X			02/05/20	03/07/20		X									

Document



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of 48



86%



In 2013, Robert Harshbarger was [sentenced to 48 months in federal prison](#) and slapped with a restitution bill of \$848,504 and a \$25,000 criminal fine for [distributing knock-off, Chinese-made drugs](#) not approved by the US Food and Drug Administration to kidney dialysis patients in Kansas.

By [federal law](#), members of Congress have 30 days from when they become aware of a stock trade — and 45 days overall from the date of a trade — to formally disclose it in a certified report to the clerk of the House of Representatives.

Lawmakers are only required to report the values of their stock trades in broad ranges, and all of Harshbarger's individual trades fell within the \$1,001 to \$15,000 range.

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Harshbarger's tardy reporting could prompt an ethics investigation or fine, which starts at \$200.

In a statement to Insider, Harshbarger's chief of staff, Zac Rutherford, said that the congresswoman in December retained legal counsel to ensure compliance with all House Committee on Ethics guidelines and reporting requirements.

That counsel "established a system and protocols with the congresswoman's personal financial planner who provided assurance of familiarity and experience with all processes and requirements." The financial planner managed the congresswoman's portfolio "without any authorization, direction, or approval from Congresswoman Harshbarger."

However, "the financial advisor did not follow the established system and protocols," Rutherford said. "When the financial advisors' gross oversight was discovered, it became immediately clear that he was not familiar, and his error caused the congresswoman not to meet reporting requirements within the specified timeframe."

Rutherford added that "Harshbarger and our counsel immediately worked to rectify by self-reporting to the Committee and worked with it to file all necessary paperwork. Congresswoman Harshbarger, despite her best efforts to remain compliant, accepts full responsibility and has taken the appropriate steps to ensure this never happens again."

The STOCK Act holds members of Congress personally responsible for complying with disclosure rules, regardless of whether they make stock trades themselves or use a financial adviser or broker.

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watchdog group Campaign Legal Center, said the Office of Congressional Ethics

"should investigate" whether the lawmaker intentionally hid the trades for months.

"This is yet another example of a lawmaker ignoring the STOCK Act by failing to report a large volume of stock trades without consequence," Payne said.

Numerous STOCK Act violations in 2021

Insider and other news organizations have this year revealed numerous examples of federal lawmakers violating the STOCK Act. The 2012 law was designed to combat insider trading among elected officials and require lawmakers to be transparent about their personal financial dealings.

In addition to Harshbarger, lawmakers who this year appear to have violated the STOCK Act's transparency provisions include:

- Sen. [Dianne Feinstein](#), a Democrat of California
- Sen. [Tommy Tuberville](#), a Republican of Alabama

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- Rep. [Tom Malinowski](#), a Democrat of New Jersey

Rep. [Tom Harkin](#), a Democrat of Iowa

- Rep. [Pat Fallon](#), a Republican of Texas
- Rep. [Dan Crenshaw](#), a Republican of Texas
- Rep. [Sean Patrick Maloney](#), a Democrat of New York
- 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

Former Rep. Harley Rouda, a Democrat of California who's attempting a comeback, also [failed to properly disclose](#) stock trades.

Rep. Lois Frankel, a Democrat of Florida, likewise appears to have violated the STOCK Act with disclosures a few days late, although her [office has disputed that](#).

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