

Paul Kane, Congress could get a healthy pay raise, courtesy of the courts, Washington Post, 2/21/26

For more than 15 years, members of Congress have blocked themselves from receiving an automatic cost-of-living increase in their pay despite soaring prices across America.

In private, many members suggest they deserve higher pay but, in an era where fewer than 1 in 5 Americans approve of Congress, they are too afraid of their own voters to allow their salaries to increase.

Veteran lawmakers have lamented that the salary stagnation has encouraged some relatively young members [to head into early retirement or to the private sector](#) rather than stay in Congress and try to help improve the dysfunctional institution.

But now, in an under-the-radar case in the federal courts, a small bipartisan group of former members and veteran lawmakers have found some quirks in the law that could put them on the brink of winning more money for themselves and the new congressional generation.

The individual plaintiffs could stand to win between \$225,000 and \$420,000 in damages, according to one court filing, while a rank-and-file lawmaker could see a jump in pay from the current \$174,000 salary, set in 2009, up to more than \$250,000.

The lawsuit has flummoxed the judge overseeing it: [Eric G. Bruggink](#), appointed by President Ronald Reagan 40 years ago to the U.S. Court of Federal Claims. In one early legal brief, he referred to the “unsympathetic” plaintiffs and placed the blame on them.

“Congress has no one to blame but itself,” Bruggink said early in a two-hour hearing Friday, asking at a later point: “We have to rescue Congress, in effect?”

The Justice Department, which has been defending the pay freeze since late in the Biden administration, seems annoyed by the idea that it has to defend laws blocking the cost-of-living

boosts that were set by Congress itself. Through the quirky format set more than 30 years ago, lawmakers could have easily have allowed pay to increase.

“They just have to do nothing,” Galina I. Fomenkova, a commercial litigation lawyer at the Justice Department, told the judge.

Bruggink appeared amenable to some arguments from the lawmakers’ legal team led by Ken Cuccinelli II, the former Virginia attorney general and 2013 gubernatorial candidate.

The bipartisan plaintiffs include Reps. Rick Crawford (R-Arkansas), chair of the House Intelligence Committee, and Steny H. Hoyer (D-Maryland), the former majority leader. If successful, Cuccinelli envisions a system where current lawmakers could “opt in” to the higher pay and others could decline to receive more money, similar to how some very wealthy members return their salary to the Treasury.

“There will be fireworks,” Cuccinelli acknowledged of the political fallout.

Indeed, some conservative groups have denounced the lawsuit as a money grab by unproductive members of Congress.

“With the federal debt on track to overtake the size of the U.S. economy, it is deeply troubling that these current and former lawmakers are seeking back pay from taxpayers,” Demian Brady, vice president of Research for the National Taxpayers Union Foundation, [wrote in a blog post Thursday](#).

At the close of Friday’s hearing, Bruggink signaled that he could come back with a tentative ruling in a few weeks. If he sides with the lawmakers, an extended set of hearings would calculate how much in damages to award. And, he said, “people with a higher pay grade” were likely to have the final word on the matter as he expects the case to be appealed to higher courts.

The case centers on a 1989 ethics law that banned members of Congress from a longtime practice of receiving “honorarium” — which allowed them to pocket tens of thousands of dollars in outside income from speeches and appearances without much transparency.

In exchange, the lawmakers voted to increase their salaries by 40 percent and set up a system where members of Congress and federal judges would automatically receive a cost-of-living adjustment, on par with how federal workers get a “COLA” increase each year.

It took effect in January 1991, at the start of the next Congress, which was in line with the soon-to-be-approved 27th Amendment, which declared any change in lawmaker pay would have to come after an intervening election.

That amendment, first offered by a founding father in 1789 but not ratified until 1992, is anchored around the idea that lawmakers cannot change their own salary unless they have to first face the voters.

“All the way back to James Madison, your honor,” Cuccinelli told the judge, “they knew this was a touchy issue. It was always going to be touchy.”

After the 1989 law and the constitutional amendment, the process went mostly as planned. Administration officials calculated inflation figures and determined the bump in pay for federal workers, lawmakers and judges.

But in 2009, as the Great Recession dragged the economy down and the unemployment rate crested at 10 percent, a bipartisan collection of lawmakers did not want to accept their salary increase. So leadership agreed to include a policy rider to a bill funding federal agencies that blocked the increase for lawmakers and judges.

Congressional pay has been frozen ever since, but a group of judges filed suit in 2009 and won a judgment, [in a case also overseen by Bruggink](#), that said Congress did not have the power

to block judicial pay, ordering more than \$150,000 each in back pay to the six plaintiffs.

So now district judges and other lower-level federal judges — including Bruggink — [make just shy of \\$250,000](#), about \$75,000 more than rank-and-file members of the House and Senate.

Those judges don’t have to maintain two residences, the way most members of Congress do, one at home and another in Washington. Even when party leaders like Hoyer publicly made the case for better pay to make Congress more appealing, lawmakers from both parties [would object](#), particularly those in swing districts trying to appeal to constituents who despise Congress.

So rather than giving better salaries, the House has resorted to the type of gimmicks that got the public angry back in the 1980s with “honorarium” for speeches.

Lawmakers can now claim per-diems for expenditures on the nights that they are staying in Washington, which has allowed them to expense some of their apartment rentals or hotel stays. Thrown together on the fly a few years ago, the system had little oversight and did not require receipts to be shown to get reimbursed, [according to a Washington Post investigation](#).

This lawsuit is the closest anyone has steered Congress back to the original intent of the 1989 law and the 27th Amendment in many years. Cuccinelli’s theory of the case could be boiled down to Congress doesn’t even know how to properly block its own pay raise.

The 1989 law requires Congress to pass a law blocking the pay hike in election years before voting starts (sometimes early voting starts many weeks before Election Day) so that the frozen salary doesn’t take effect until the start of the next Congress in early January.

Cuccinelli said they did this in proper form just once, in May 2010, well ahead of those

midterm elections. Instead, every other time lawmakers blocked the pay hike they did so by adding language to a funding bill that most often did not get signed into law until after an election.

And when they added this language to bills in odd-numbered years, there was no “intervening election” and, therefore, they were reducing their pay at a time when they were not allowed to change congressional salaries, he argued.

Fomenkova grew exasperated at times with Cuccinelli’s arguments, which seemed to gain traction with the judge but also ignored that Congress had its own easy remedy to the situation.

“They did this to themselves,” she said.