



DEMAND PROGRESS

March 20, 2020

The Honorable James Lankford
The Honorable Christopher Coons
U.S. Senate Select Committee on Ethics
United States Senate
Senate Hart Office Building Room 220
Washington, DC 20510

Re: Request for Investigation into Senator Richard Burr

Dear Chairman Lankford and Vice Chairman Coons:

The independent, non-profit newsroom ProPublica reported in an article authored by Robert Faturechi and Derek Willis that, on March 19, 2020, Senator Richard Burr “sold off a significant percentage of his stocks, unloading between \$628,000 and \$1.72 million of his holdings on Feb. 13 in 33 separate transactions” in circumstances that suggest he did so after receiving non-public information regarding the Coronavirus arising from his role as a member of the United States Senate and as Chairman of the Senate Select Committee on Intelligence.¹ The timing and circumstances, including a sharp decline in the stock market one week later, suggests that he had and made use of non-public information to avoid significant financial losses that he would have incurred had he held on to the stocks.



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<https://www.propublica.org/article/senator-dumped-up-to-1-6-million-of-stock-after-reassuring-public-about-coronavirus-preparedness>

ProPublica additionally reported that Senator Burr made public statements that downplayed the emerging health threats on Feb. 7 even as he warned a well-heeled club for businessmen — and potential donors — on Feb. 27 that the threat was akin to the 1918 pandemic.

In addition, while 33 separate transactions alone may constitute a pattern and practice of self-enrichment at the expense of the public's trust, Politico reported in April 2009 that Senator Burr engaged in a practice of self-enrichment similar to that reported by ProPublica.²

“Sen. Richard Burr (R-N.C.) told his wife to pull the family's cash out of an ATM at the height of last fall's financial crisis — but he advised North Carolinians not to panic when Charlotte-based Wachovia was taken over by Citigroup in an emergency transaction around the same time.” At the time, Senator Burr reportedly said “There was no attempt to use proprietary information.” Altogether, this suggests ongoing behavior beyond that publicly reported.

A public office is a public trust. These facts provide grounds to believe that Senator Burr has used information provided to him in his official capacity as a Member of the United States Senate and as Chairman of the Senate Select Committee on Intelligence to obtain a personal pecuniary benefit. In addition, it suggests that he sought to minimize public understanding of the Coronavirus threat while accruing a financial benefit to himself. If accurate, Senator Burr appears to have violated the Standards of Conduct for Members of the Senate by using his power for his personal benefit. Furthermore, it suggests he may be in violation of the STOCK Act, which imposes a duty of trust and confidentiality on all federal officials with respect to nonpublic, material information which they may receive in the course of their official duties. And it suggests a pattern and practice of behavior, and thus additional unreported incidents.

Article 1, Section 5, Clause 2 of the Constitution empowers the U.S. Senate to punish its Members for disorderly behavior, and with the concurrence of two thirds, expel a Member. Senate Resolution 338 (as amended) authorizes the Senate Select Committee on Ethics “to receive and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate.”

Senate Standing Order 117, on Standards of Conduct for Members of the Senate,³ states:

(a) The ideal concept of public office, expressed by the words, “A public office is a public trust”, signifies that the officer has been entrusted with public power by the people; **that the officer holds this power in trust to be used only for their benefit and never for the benefit of himself or of a few; and that the officer must never conduct his own affairs so as to infringe on the public interest.** All official conduct of Members of the Senate should be guided by this paramount

² <https://www.politico.com/blogs/on-congress/2009/04/burr-told-constituents-not-to-mob-atms-017622>

³ <https://www.govinfo.gov/content/pkg/SMAN-113/pdf/SMAN-113.pdf>

concept of public office.

(b) These rules, as the written expression of certain standards of conduct, complement the body of unwritten but generally accepted standards that continue to apply to the Senate.

(emphasis added)

The Senate Ethics Manual, in the section entitled “improper conduct reflecting upon the Senate,” explains that “certain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation.”⁴

Senator Burr’s actions, if they are as suggested by news reports, would bring the Senate into disrepute. He would have misused his oversight powers as Senator and as Chairman of the Senate Select Committee on Intelligence to obtain information to financially benefit himself and to financially advantage the few attendees at the business club. Specifically, to prevent financial losses in the stock market through use of non-public information provided to him by virtue of his public position.

In addition to this catch-all ethics provision, Senator Burr appears to be in violation of the STOCK Act, a.k.a. the Stop Trading on Congressional Knowledge Act of 2012.⁵ The Congressional Research Service describes a purpose of the law as to “expressly affirms that all federal officials have a duty’ of trust and confidentiality with respect to nonpublic, material information which they may receive in the course of their official duties, and a duty not to use such information to make a private profit.”⁶

Section 4(b) of the STOCK Act states “each Member of Congress ... owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with **respect to material, nonpublic information derived from such person’s position as a Member of Congress ... or gained from the performance of such person’s official responsibilities.**”⁷

(emphasis added)

It appears that Senator Burr may have used material, nonpublic information obtained from his position as a U.S. Senator and as Chairman of the Senate Select Committee on Intelligence, which would constitute a breach of his duty of trust and confidentiality to the Congress and the citizens of the United States. The information provided to Burr may have originated from a business that is traded on the stock exchange.

⁴ https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=f2eb14e3-1123-48eb-9334-8c4717102a6e

⁵ Pub.L. 112–105; 5 USC App 101.

⁶ <https://www.everycrsreport.com/reports/R42495.html>

⁷ Codified at 15 U.S. Code § 78u–1.

Senator Burr apparently made use of information gained through his public position for personal benefit on a number of occasions. There may be additional instances that are not yet publicly reported.

We urge the Senate Select Committee on Ethics to start a formal investigation into Senator Burr. We further urge that he step down from his position as Chairman of the Senate Select Committee on Intelligence for the duration of the investigation.

Respectfully yours,

Daniel Schuman
Policy Director
Demand Progress