March 20, 2020

Honorable James Lankford, Chair
Honorable Christopher A. Coons, Vice Chair
Senate Select Committee on Ethics
Hart Building, Room 220
Washington, DC 20510

Re: Request for Investigation of Sens. Richard Burr (R-NC) and Kelly Loeffler (R-GA)

Dear Chairman Lankford and Vice Chairman Coons,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Senate Select Committee on Ethics (the “Ethics Committee”) investigate whether Sens. Richard Burr (R-NC) and Kelly Loeffler (R-GA) violated the STOCK Act, insider trading laws, and ethics rules when they sold millions of dollars in stock assets after receiving nonpublic briefings about the coronavirus outbreak. CREW further requests that if additional facts emerge suggesting possible violations by other Senators, that the Committee also investigate that conduct.

Sen. Burr chairs the Senate Select Committee on Intelligence Committee. According to recent news reports, Sen. Burr’s committee received “daily updates” from the intelligence community on the coronavirus outbreak during February.¹ Sen. Burr also is a member of the Senate Committee on Health, Education Labor & Pensions (“Senate Health Committee”), which hosted a private briefing for Senators from administration officials about the outbreak on January 24, 2020.² On February 13, Sen. Burr made 33 separate stock sale transactions, according to a periodic transaction report he later filed.³ In all, those stock sales totaled between $628,000 and $1.72 million.⁴ The stocks he sold included some highly vulnerable to the economic impact of the coronavirus pandemic, including Wyndham Hotels and Resorts and Extended Stay America.⁵ Earlier in February, Sen. Burr assured the public that “the United States today is better prepared

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⁵ Burr PTR, at 2, 3. One news report asserted that it is not clear how much control Sen. Burr has over his transactions, noting his assets are managed by a private wealth management firm, Stephens Inc. Evers-Hillstrom, Open Secrets, Mar. 19, 2020.
than ever before to face emerging public health threats, like the coronavirus.”

However, speaking to a private audience later in February, Sen. Burr said the coronavirus “is much more aggressive in its transmission than anything that we have seen in recent history,” comparing it to the 1918 flu pandemic. Sen. Burr’s February stock sales disclosure appears to be his first since August 2019. Just over a week after Sen. Burr’s February 13 stock sales, markets began a steep decline in response to the coronavirus pandemic.

Sen. Loeffler also is a member of the Senate Health Committee, and she attended the January 24 briefing. That same day, Sen. Loeffler made the first of more than 20 stock sales she and her husband executed between then and February 14, according to her periodic transaction reports. In all, Sen. Loeffler and her husband sold between $1.275 million and $3.1 million in stock. Sen. Loeffler also purchased stock in two companies during this period, including Citrix, which produces teleworking software and could have been impacted by the coronavirus outbreak. Sen. Loeffler also made comments appearing to minimize the impact of the outbreak, tweeting on February 28 that the administration was “doing a great job working to keep Americans healthy & safe.” About a week of her final stock sale, markets began to fall.

The STOCK Act prohibits members of Congress from using nonpublic information for private profit and affirms that members are not exempt from federal securities law prohibiting insider trading. As the Ethics Committee explained in guidance to Senators and staff, insider
trading “is the use of material, nonpublic information to purchase or sell a security, including using confidential information gained because of one’s Senate position to make a profit or avoid a loss.”16 “Material” information is what a reasonable investor would want to know when making an investment decision, and “nonpublic” means confidential or not widely disseminated to the public.17 Securities laws further prohibit “tipping” – passing on material, nonpublic information to others who trade based on that information with the intent of benefitting from the disclosure.18 As a result, a Senator who uses material, nonpublic information to profit or avoid a loss, or tips someone else to do so, violates the STOCK Act and securities laws. Similarly, the Code of Ethics for Government Service prohibits the use of nonpublic information for private gain,19 and Senate Rules prohibit disclosing or misusing confidential information.20

The well-timed stock sales of Sens. Burr and Loeffler warrant an investigation into whether they violated the STOCK Act, insider trading laws, and ethics rules. It is not clear if these Senators sold their stock just before markets crashed based on material, nonpublic information they received or if they sold for other reasons. However, Sen. Burr may have received nonpublic information about the magnitude and expected impact of the coronavirus outbreak through the Senate Intelligence Committee and the briefings that committee reportedly received. Sen. Burr’s dire comments to the private audience in late February, in sharp contrast to his earlier, rosier public statements, suggest he may have received nonpublic information. Sen. Loeffler attended the January 24 Senate Health Committee briefing and may have received nonpublic information there, and it is likely Sens. Burr also attended. Furthermore, information about the extent of the coronavirus outbreak, including its economic consequences, likely would be material to a reasonable investor. As a result, the Ethics Committee should investigate if Sens. Burr and Loeffler sold their stock based on material, nonpublic information about the coronavirus outbreak.21

16 Senate STOCK Act Guidance at 1.
17 Id.
18 Id.
19 Code of Ethics for Government Service, ¶ 8; Senate STOCK Act Guidance at 3.
20 Senate Rule 29.5; Senate STOCK Act Guidance at 3.
The purpose of the STOCK Act is to prevent members of Congress from using inside information gained from their official positions for private gain. Especially in these difficult times, any indication that a Senator abused his or her office to avoid a personal financial loss is cause for deep concern. It is therefore imperative that the Ethics Committee immediately investigate whether Sens. Burr and Loeffler engaged in insider trading.

Sincerely,

[Signature]

Noah Bookbinder
Executive Director