

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

¹ Mark Hosenball, U.S spy agencies monitor coronavirus spread, concerns about India: sources, *Reuters*, Feb. 27, 2020, <https://reut.rs/2Un0jXR>; Robert Faturechi and Derek Willis, Senator Dumped Up to \$1.7 million of Stock After Reassuring Public About Coronavirus Preparation, *ProPublica*, Mar. 19, 2020, <https://bit.ly/33w2exz>.

² Senate Health Committee Announces Briefing to Update Senators on Coronavirus, Senate Committee on Health, Education Labor & Pensions, Jan. 23, 2020, <https://bit.ly/2Um7r6L>.

³ Richard M. Burr, Periodic Disclosure of Financial Transactions, Feb. 26, 2020 (“Burr PTR”), <https://efdsearch.senate.gov/search/print/paper/156b69ba-6f48-4a32-b796-707093c476c6/>.

⁴ *Id.*; see also Faturechi and Willis, *ProPublica*, Mar. 19, 2020; Karl Evers-Hillstrom, Senate Intel chair unloaded stocks in mid-February before coronavirus rocked markets, *Open Secrets*, Mar. 19, 2020, <https://bit.ly/2IZqdvo>; Matthew Mosk, North Carolina Sen. Richard Burr sold off stock ahead of coronavirus spread: Reports, *ABC News*, Mar. 19, 2020, <https://abcn.ws/2J3m2ie>.

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.”⁶ 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.⁷ Sen. Burr’s February stock sales disclosure appears to be his first since August 2019.⁸ Just over a week after Sen. Burr’s February 13 stock sales, markets began a steep decline in response to the coronavirus pandemic.⁹

Sen. Loeffler also is a member of the Senate Health Committee, and she attended the January 24 briefing.¹⁰ 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.¹¹ In all, Sen. Loeffler and her husband sold between \$1.275 million and \$3.1 million in stock.¹² 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.¹³ 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.”¹⁴ 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.¹⁵ As the Ethics Committee explained in guidance to Senators and staff, insider

⁶ Sen. Lamar Alexander and Sen. Richard Burr, Coronavirus prevention steps the U.S. government is taking to protect you, *Fox News*, Feb. 7, 2020, <https://fxn.ws/33x0CDx>.

⁷ Tim Mak, Intelligence Chairman Raised Virus Alarms Weeks Ago, Secret Recording Shows, *NPR*, Mar. 19, 2020, <https://n.pr/2U5zuJ2>.

⁸ Richard M. Burr, Periodic Disclosures of Financial Transactions, <https://efdsearch.senate.gov/search/>.

⁹ Dave Merrill and Esha Day, What the Dow’s 28% Crash Tells Us About the Economy, *Bloomberg*, Mar. 18, 2020, <https://bloom.bg/3a9hgLY>. Sen. Burr asserted in a public statement that his decisions to sell stock were based on public information, and he asked this Committee to review this matter “understanding the assumption many could make in hindsight.” Statement of Senator Richard Burr, Mar. 20, 2020, <https://bit.ly/2WwW7aE>.

¹⁰ Lachlan Markay, William Bredderman, and Sam Brodney, Sen. Kelly Loeffler Dumped Millions in Stock After Coronavirus Briefing, *Daily Beast*, Mar. 19, 2020, <https://bit.ly/2J2wJxK>.

¹¹ Kelly Loeffler, Periodic Transaction Report, Mar. 12, 2020 (“Loeffler Mar. 12 PTR”), <https://efdsearch.senate.gov/search/view/ptr/370492b8-ed0a-4792-b45b-972d5da8a1e5/>; Kelly Loeffler, Periodic Transaction Report (Amendment 1), Feb. 7, 2020 (“Loeffler Feb. 7 PTR”), <https://efdsearch.senate.gov/search/view/ptr/8b915201-8116-4027-9b76-8595ec4ffd85/>. In response to news reports about the stock sales, Sen. Loeffler asserted: “I do not make investment decisions for my portfolio. Investment decisions are made by multiple third-party advisors without my or my husband’s knowledge or involvement,” Senator Kelly Loeffler (@SenatorLoeffler), Twitter, 12:25 a.m., Mar. 20, 2020), <https://bit.ly/2Qxle9r>, and that she “was informed of these purchases and sales on February 16, 2020 — three weeks after they were made.” Senator Kelly Loeffler (@SenatorLoeffler), Twitter, 12:25 a.m., Mar. 20, 2020), <https://bit.ly/2Qw6pEn>.

¹² Loeffler Mar. 12 PTR; Loeffler Feb. 7 PTR; Markay, Bredderman, and Brodney, *Daily Beast*, Mar. 19, 2020.

¹³ *Id.*; Loeffler Mar. 12 PTR.

¹⁴ Markay, Bredderman, and Brodney, *Daily Beast*, Mar. 19, 2020.

¹⁵ Pub. L. 112-105 §§ 3, 4; *see also* Restrictions on Insider Trading Under Securities Laws and Ethics Rules, Senate Select Comm. on Ethics, Dec. 4, 2012 (“Senate STOCK Act Guidance”), <https://bit.ly/2U1UoZo>. Under the STOCK Act, “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

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

derived from such person’s position as a Member of Congress . . . or gained from the performance of such person’s official responsibilities.” Pub. L. 112-105 § 4(b)(2) (codified at 15 U.S.C. § 78u-1(g)(1)).

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.

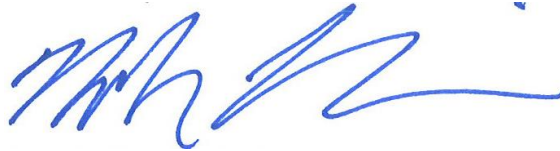
²⁰ Senate Rule 29.5; Senate STOCK Act Guidance at 3.

²¹ At least three other senators sold securities in this time frame. Sen. James Inhofe made five stock sales on January 27, and another one on February 20, with a value of between \$230,006 and \$500,000, James M. Inhofe, Periodic Transaction Report, Mar. 13, 2020, <https://efdsearch.senate.gov/search/view/ptr/02f8b979-2850-4db9-a537-a768e1eb7a67/>; James M. Inhofe, Periodic Transaction Report, Feb. 14, 2020, <https://efdsearch.senate.gov/search/view/ptr/f9e84e52-f7f3-4457-987e-a85d75f2a0d2/>, but Sen. Inhofe asserts he did not attend the January 24, 2020 briefing and it is not known at this time if other non-public information was available to him. James M. Inhofe (@JimInhofe), Twitter (10:30a.m., Mar. 20, 2020), <https://bit.ly/2Ua7x2N>. Sen. Ron Johnson sold between \$5,000,001 and \$25,000,000 in securities in one company on March 2, 2020, Ron Johnson, Periodic Transaction Report, Mar. 12, 2020, <https://efdsearch.senate.gov/search/view/ptr/3877f56e-ceb3-4e34-9659-cf52ba9efc5d/>, but that was after the markets began their precipitous decline and did not appear likely to be related to the pandemic. Daniel Bice, *U.S. Sen. Ron Johnson defends Pacur sale amid accusations of insider trading by other GOP senators*, *Milwaukee Journal Sentinel*, Mar. 20, 2020, <https://bit.ly/2WuSG4r>. Sen. Dianne Feinstein’s husband sold shares of between \$1,500,000 and \$6,000,000 of one company, Allogene Therapeutics Inc., on January 31 and February 18, 2020, Dianne Feinstein, Periodic Transaction Report, Feb. 28, 2020 (amendment), <https://efdsearch.senate.gov/search/view/paper/4c78ce9f-d842-4f36-9102-48e43377166b/>; Dianne Feinstein,

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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,



Noah Bookbinder
Executive Director

Periodic Transaction Report, Mar. 17, 2020, <https://efdsearch.senate.gov/search/view/paper/680b4c2d-8eea-48c5-b79e-df2754e37ac4/>, but those sales were just of a single company's stock out of what appears to be a larger portfolio, and the portfolio is held in a blind trust according both to public statements and to documents filed with the Senate. Eric Lipton and Nicholas Fandos, [Senator Richard Burr Sold a Fortune in Stocks as G.O.P Played Down Coronavirus Threat](https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html), *New York Times*, Mar. 20, 2020, <https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html>; Certificate of Independence of Trustee of Qualified Blind Trust, Jan. 9, 2014, <https://efdsearch.senate.gov/search/view/paper/5BA2C00C-53A0-4E3A-AACA-3CB46AFA8E37/>. These circumstances appear to make violations of ethics rules or insider trading laws significantly less likely. Should new facts emerge suggesting possible violations, the Committee should investigate these instances as well.