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March 20, 2020

U.S. Securities and Exchange Commission
c/o Co-Directors Stephanie Avakian and Steven Peikin
Division of Enforcement
100 F Street, NE
Washington, DC 20549

Re: Complaint Requesting Investigation of Senators Richard Burr, Kelly Loeffler, James Inhofe and Dianne Feinstein

Dear Co-Directors Stephanie Avakian and Steven Peikin:

Common Cause, a nonprofit, nonpartisan organization with more than 2 million members and supporters around the United States, respectfully requests that you begin an investigation to determine whether Senators Richard Burr, Kelly Loeffler, James Inhofe and Dianne Feinstein violated the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act),¹ the Securities Exchange Act of 1934² and other laws and regulations regarding stock trading applicable to Members of Congress.

Specifically, Common Cause requests an investigation of whether Senators Richard Burr, Kelly Loeffler, James Inhofe and Dianne Feinstein engaged in illegal insider trading by trading stocks based on material, nonpublic information regarding the COVID-19 coronavirus pandemic received in private, confidential briefings for Senators by officials from the Centers for Disease Control and Prevention, the National Institute of Allergy and Infectious Diseases and other government officials.

APPLICABLE STATUTES, REGULATIONS AND RULES

Section 3 of the STOCK Act requires the U.S. Senate Select Committee on Ethics to issue interpretive guidance clarifying that a Senator “may not use nonpublic information derived from such person's position as a Member of Congress ... or gained from the performance of such person's official responsibilities as a means for making a private profit.”³

¹ Pub. L. 112–105, S. 2038, 126 Stat. 291 (April 4, 2012).

² 15 U.S.C. § 78a *et seq.*

³ Pub. L. 112–105, S. 2038, 126 Stat. 291 (April 4, 2012).

Section 4(a) of the STOCK Act affirms that “Members of Congress ... are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.”⁴

Section 4(b) of the STOCK Act amends the Securities Exchange Act to make clear that “for purposes of the insider trading prohibitions” of the Securities Exchange Act:

[E]ach 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.⁵

Section 4(b) of the STOCK Act further amends the Securities Exchange Act to make clear that nothing in the new subsection “shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the [Securities and Exchange] Commission under those provisions.”⁶

Section 10 of the STOCK Act makes clear that nothing in the Act or in the interpretive guidance issued by Congressional ethics committees shall be construed to “impair or limit the construction of the antifraud provisions of the securities laws or the Commodity Exchange Act or the authority of the Securities and Exchange Commission or the Commodity Futures Trading Commission under those provisions” or to be in derogation of other existing laws, regulations, or ethical obligations governing Members of Congress.⁷

The Securities Exchange Act prohibits the use of “any manipulative or deceptive device or contrivance” in connection with the purchase or sale of stocks.⁸ Securities and Exchange Commission Rules prohibit “any manipulative or deceptive device or contrivance”⁹ as well as “any device, scheme, or artifice to defraud”¹⁰ in connection with a stock trade.

The United States Criminal Code also prohibits securities fraud and conspiracy to commit securities fraud. For example:

⁴ *Id.*

⁵ Pub. L. 112–105, S. 2038, 126 Stat. 291 (April 4, 2012); see also 15 U.S.C. § 78u–1(g)(1).

⁶ Pub. L. 112–105, S. 2038, 126 Stat. 291 (April 4, 2012); see also 15 U.S.C. § 78u–1(g)(3).

⁷ Pub. L. 112–105, S. 2038, 126 Stat. 291 (April 4, 2012).

⁸ 15 U.S.C. § 78j(b).

⁹ 17 C.F.R. § 240.10b-1.

¹⁰ 17 C.F.R. § 240.10b-5.



Whoever knowingly executes, or attempts to execute, a scheme or artifice ... to defraud any person in connection with ... any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act ... or to obtain, by means of false or fraudulent pretenses ... any money or property in connection with the purchase or sale of ... any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act ... shall be fined under this title, or imprisoned not more than 25 years, or both.¹¹

The Criminal Code also provides that if “two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof ... and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.”¹²

The U.S. Supreme Court and lower courts have interpreted these provisions to prohibit insider trading (*i.e.*, stock trading on the basis of material, nonpublic information) and also to prohibit the provision of nonpublic information to others for the purpose of stock trading (*i.e.*, “tipping”).¹³

U.S. Senate Select Committee on Ethics interpretative guidance issued under mandate of the STOCK Act makes clear that all of these provisions apply to Senators advising, for example:

- Federal Securities Laws Bar Insider Trading by Anyone, including Senators and Staff.
- Existing Securities Law Prohibits Trading on Information Obtained Through Official Duties.
- Existing Securities Law Prohibits Passing on Inside Information to Others Who Trade.¹⁴

This U.S. Senate Select Committee on Ethics interpretative guidance further explains that multiple government ethics rules also prohibit insider trading. The Committee explains that Code of Ethics for Government Service “restricts the use of nonpublic information for private gain” and specifically states that a Senator shall “[n]ever use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.”¹⁵

Senate Rule 29.5 states:

¹¹ 18 U.S.C. § 1348.

¹² 18 U.S.C. § 371.

¹³ See, e.g., *Salman v. United States*, 137 S. Ct. 420 (2016); *Chiarella v. United States*, 445 US 222 (1980); *United States v. O’Hagan*, 521 US 642 (1997).

¹⁴ U.S. Senate, Select Committee on Ethics, Restrictions on Insider Trading Under Securities Laws and Ethics Rules (Dec. 4, 2012), https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=8C923399-2DC0-4EF6-AOD2-9EF564FC7038.

¹⁵ *Id.*

Any Senator, officer, or employee of the Senate who shall disclose the secret or confidential business or proceedings of the Senate, including the business and proceedings of the committees, subcommittees, and offices of the Senate, shall be liable, if a Senator, to suffer expulsion from the body; and if an officer or employee, to dismissal from the service of the Senate, and to punishment for contempt.¹⁶

Senate Rule 37.1, the Senates primary conflict of interest rule, states:

A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt or accrual of which would occur by virtue of influence improperly exerted from his position as a Member, Officer, or employee.¹⁷

According to the U.S. Senate Select Committee on Ethics interpretative guidance, the “Senators who drafted the rule intended ‘that this paragraph should be read as a broad prohibition against members, officers or employees deriving financial benefit, directly or indirectly, from use of their official position[s].’”¹⁸

FACTS PROVIDING REASON TO BELIEVE SENATORS BURR, LOEFFLER, INHOFE AND FEINSTEIN MAY HAVE ENGAGED IN ILLEGAL INSIDER TRADING

According to “Periodic Disclosure of Financial Transactions” reports recently filed with the Secretary of the Senate by Senators Richard Burr, Kelly Loeffler, James Inhofe and Dianne Feinstein, there is reason to believe that these Senators may have engaged in illegal insider trading by trading stocks based on material, nonpublic information regarding the COVID-19 coronavirus pandemic received in private, confidential briefings for Senators by officials from the Centers for Disease Control and Prevention, the National Institute of Allergy and Infectious Diseases and others.

Beginning on March 19, numerous news outlets—including [ProPublica](#), [Center for Responsive Politics](#), [Daily Beast](#), [NPR](#), [The New York Times](#) and [Fox News](#)—reported that multiple Senators who had received private briefings regarding the COVID-19 pandemic and engaged in stock transactions before the recent sharp stock market decline that prevented these Senators from suffering the stock marked losses that have been suffered by stockholders in the general public who were not privy to the

¹⁶ Available at <https://www.rules.senate.gov/rules-of-the-senate>.

¹⁷ *Id.*

¹⁸ U.S. Senate, Select Committee on Ethics, Restrictions on Insider Trading Under Securities Laws and Ethics Rules (Dec. 4, 2012), https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=8C923399-2DC0-4EF6-AOD2-9EF564FC7038.

confidential information received by these Senators. At least one of these Senators, Richard Burr, may have also tipped off others of the likely dire economic consequences of the coronavirus.

[NPR reported](#), for example, Senator Richard Burr, chairman of the Senate Intelligence Committee “warned a small group of well-connected constituents” on February 27 “to prepare for dire economic and societal effects of the coronavirus, according to a secret recording obtained by NPR.”¹⁹ According to *NPR*, Burr’s remarks were made at a luncheon “organized by the Tar Heel Circle, a nonpartisan group whose membership consists of businesses and organizations in North Carolina.”²⁰ “In attendance, according to a copy of the RSVP list obtained by *NPR*, were dozens of invited guests representing companies and organizations from North Carolina. And according to federal records, those companies or their political committees donated more than \$100,000 to Burr’s election campaign in 2015 and 2016.”

In a [Feb. 7 Fox News op-ed](#) that Senator Burr co-authored, Burr wrote that the “United States today is better prepared than ever before to face emerging public health threats, like the coronavirus.”²¹ According to *NPR*, the remarks delivered by Senator Burr at the February 27 luncheon were “dire” and “much more alarming” than any he had delivered in more public forums.²² “‘There’s one thing that I can tell you about this: It is much more aggressive in its transmission than anything that we have seen in recent history,’ he said, according to a secret recording of the remarks obtained by *NPR*. ‘It is probably more akin to the 1918 pandemic.’”²³ Burr further advised attendees at the February 27 luncheon: “Every company should be cognizant of the fact that you may have to alter your travel. You may have to look at your employees and judge whether the trip they’re making to Europe is essential or whether it can be done on video conference. Why risk it?”²⁴ According to *NPR*:

Sixteen days before North Carolina closed its schools over the threat of the coronavirus, Burr warned it could happen. “There will be, I’m sure, times that communities, probably

¹⁹ Tim Mak, *Weeks Before Virus Panic, Intelligence Chairman Privately Raised Alarm, Sold Stocks*, *NPR*, Mar. 19, 2020, <https://www.npr.org/2020/03/19/818192535/burr-recording-sparks-questions-about-private-comments-on-covid-19>.

²⁰ *Id.*

²¹ Sen. Lamar Alexander, Sen. Richard Burr, *Coronavirus prevention steps the U.S. government is taking to protect you*, *FOX NEWS*, Feb. 7, 2020, <https://www.foxnews.com/opinion/coronavirus-prevention-steps-the-u-s-government-is-taking-to-protect-you-sen-alexander-and-sen-burr>.

²² Tim Mak, *Weeks Before Virus Panic, Intelligence Chairman Privately Raised Alarm, Sold Stocks*, *NPR*, Mar. 19, 2020, <https://www.npr.org/2020/03/19/818192535/burr-recording-sparks-questions-about-private-comments-on-covid-19>.

²³ *Id.*

²⁴ *Id.*

some in North Carolina, have a transmission rate where they say, ‘Let’s close schools for two weeks. Everybody stay home,’” he said.²⁵

And Burr reportedly told luncheon attendees of the possibility that the military might be mobilized to combat the coronavirus. “‘We’re going to send a military hospital there; it’s going to be in tents and going to be set up on the ground somewhere,’ Burr said at the luncheon. ‘It’s going to be a decision the president and DOD make. And we’re going to have medical professionals supplemented by local staff to treat the people that need treatment.’”²⁶

[ProPublica reported](#) that on February 13, “[s]oon after he offered public assurances that the government was ready to battle the coronavirus,” Senator Burr “sold off a significant percentage of his stocks, unloading between \$628,000 and \$1.72 million of his holdings ... in 33 separate transactions.”²⁷ *ProPublica* noted:

As head of the intelligence committee, Burr, a North Carolina Republican, has access to the government’s most highly classified information about threats to America’s security. His committee was receiving daily coronavirus briefings around this time, according to a Reuters story. A week after Burr’s sales, the stock market began a sharp decline and has lost about 30% since.²⁸

The [February 27 Reuters story](#) cited by *ProPublica* reported that a “source familiar with the activities of the Senate Intelligence Committee . . . said the panel was receiving daily updates.”²⁹

The [Center for Responsive Politics reported](#) more details from Senator Burr’s “Periodic Disclosure of Financial Transactions” report.

Burr and his wife Brooke sold between \$628,000 and \$1.7 million in publicly traded stocks on Feb. 13 and didn’t buy any new positions, according to a recent financial disclosure filed with the Senate.

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²⁵ *Id.*

²⁶ *Id.*

²⁷ Robert Faturechi and Derek Willis, *Senator Dumped Up to \$1.7 Million of Stock After Reassuring Public About Coronavirus Preparedness*, PROPUBLICA, Mar. 19, 2020, <https://www.propublica.org/article/senator-dumped-up-to-1-6-million-of-stock-after-reassuring-public-about-coronavirus-preparedness>.

²⁸ *Id.*

²⁹ Mark Hosenball, *U.S. spy agencies monitor coronavirus spread, concerns about India: sources*, REUTERS, Feb. 27, 2020, <https://www.reuters.com/article/us-china-health-usa-intelligence/u-s-spy-agencies-monitor-coronavirus-spread-concerns-about-india-sources-idUSKCN20L37R>.

Between the Burrs' two accounts, they sold up to \$150,000 worth of stock in Wyndham Hotels & Resorts, which lost almost two-thirds of its market value since Feb. 13. They sold up to \$150,000 in Extended Stay America, another hotel company that lost half its value over the last month. Burr also sold up to \$65,000 of stock in Park Hotels & Resorts, which saw its stock price drop from nearly \$24 to under \$5. The hotel industry is asking President Donald Trump for a bailout as Americans increasingly avoid travel.³⁰

According to the Center for Responsive Politics, “[a]bout one week after the Burrs unloaded their shares, the stock market began to plunge on the news of coronavirus-related demand shortages. The Dow Jones Industrial Average has lost nearly one-third of its value since mid-February, wiping out the gains made during Trump’s presidency.”³¹

Senator Burr’s “Periodic Disclosure of Financial Transactions” report disclosing these transactions is available on the United States Senate website.³²

Senator Burr is not the only Senator who may have relied on material, nonpublic information in selling stocks to evade eminent stock market losses.

[The Daily Beast has reported](#) that Senator Kelly Loeffler began selling stock on January 24, “the very day that her committee, the Senate Health Committee, hosted a private, all-senators briefing from administration officials, including the CDC director and Anthony Fauci, the head of the National Institute of Allergy and Infectious Diseases, on the coronavirus.”³³ According to *The Daily Beast*:

That first transaction was a sale of stock in the company Resideo Technologies valued at between \$50,001 and \$100,000. The company’s stock price has fallen by more than half since then, and the Dow Jones Industrial Average overall has shed approximately 10,000 points, dropping about a third of its value.

It was the first of 29 stock transactions that Loeffler and her husband made through mid-February, all but two of which were sales. One of Loeffler’s two purchases was

³⁰ Karl Evers-Hillstrom, *Senate Intel chair unloaded stocks in mid-February before coronavirus rocked markets*, CENTER FOR RESPONSIVE POLITICS, Mar. 19, 2020, https://www.opensecrets.org/news/2020/03/burr-unloaded-stocks-before-coronavirus/?utm_source=twitter&utm_medium=social&utm_campaign=twitter_burr-stocks-coronavirus-031920.

³¹ *Id.*

³² Sen. Richard Burr, Periodic Disclosure of Financial Transactions, Feb. 27, 2020, <https://efdsearch.senate.gov/search/view/paper/156b69ba-6f48-4a32-b796-707093c476c6/>.

³³ Lachlan Markay, William Bredderman, Sam Brodey, *Sen. Kelly Loeffler Dumped Millions in Stock After Coronavirus Briefing*, THE DAILY BEAST, Mar. 19, 2020, <https://www.thedailybeast.com/sen-kelly-loeffler-dumped-millions-in-stock-after-coronavirus-briefing>.

stock worth between \$100,000 and \$250,000 in Citrix, a technology company that offers teleworking software and which has seen a small bump in its stock price since Loeffler bought in as a result of coronavirus-induced market turmoil.³⁴

The Daily Beast reported further:

Between Jan. 24 and Feb. 14, by contrast, Loeffler reported selling stock jointly owned with her husband worth between \$1,275,000 and \$3,100,000, according to transaction reports filed with Senate ethics officials. On Feb. 14, she also purchased the Citrix stock and another \$100,000 to \$250,000 in technology company Oracle, which has seen its share price decline by more than 18 percent since then.

The 15 stocks that Loeffler reported selling have lost more than a third of their value, on average, since she reported offloading them. She initially reported many of the transactions as sales of stock owned by her husband. Last week she amended the filing to note that most of them were jointly owned.³⁵

Senator Loeffler’s “Periodic Disclosure of Financial Transactions” reports disclosing these transactions are available on the United States Senate website.³⁶

[The New York Times](#)³⁷ and [Fox News](#)³⁸ report two more Senators who may have engaged in illegal insider trading—Senator Dianne Feinstein and Senator James Inhofe.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Sen. Kelly Loeffler, Periodic Disclosure of Financial Transactions, Mar. 12, 2020, <https://efdsearch.senate.gov/search/view/ptr/370492b8-ed0a-4792-b45b-972d5da8a1e5/>; see also Sen. Kelly Loeffler, Periodic Disclosure of Financial Transactions, Feb. 7, 2020, <https://efdsearch.senate.gov/search/view/ptr/d1798081-ddcc-48fd-a599-ceb60730a02d/>.

³⁷ Eric Lipton and Nicholas Fandos, *Senator Richard Burr Sold a Fortune in Stocks as G.O.P. Played Down Coronavirus Threat*, THE NEW YORK TIMES, Mar. 19, 2020, <https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html>.

³⁸ Dom Calicchio, *Dianne Feinstein, 3 Senate colleagues sold off stocks before coronavirus crash: reports*, FOX NEWS, Mar. 20, 2019, <https://www.foxnews.com/politics/dianne-feinstein-3-senate-colleagues-sold-off-stocks-before-coronavirus-crash-reports>.

Senator Feinstein who, like Senator Burr, is a member of the Senate Intelligence Committee, “sold \$1.5 million to \$6 million worth of stock in Allogene Therapeutics, a California-based biotech company, in transactions that took place on Jan. 31 and Feb. 18.”³⁹

Senator Feinstein’s “Periodic Disclosure of Financial Transactions” reports disclosing these transactions are available on the United States Senate website.⁴⁰

Senator Inhofe reportedly “sold a large amount of stock—all on Jan. 27—including holdings in PayPal, Apple and Brookfield Asset Management, a real estate company, with the overall value of the sales totaling as much as \$400,000.”⁴¹

Senator Inhofe’s “Periodic Disclosure of Financial Transactions” report disclosing this transaction is available on the United States Senate website.⁴²

CONCLUSION

Based on the publicly available information detailed in this complaint, there is reason to believe that Senators Richard Burr, Kelly Loeffler, James Inhofe and Dianne Feinstein may have engaged in insider trading by trading stocks based on material, nonpublic information in violation of the STOCK Act, Securities Exchange Act, U.S. Criminal Code and federal government ethics rules. We look forward to your prompt and thorough investigation of this matter.

Respectfully submitted,

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³⁹ Eric Lipton and Nicholas Fandos, *Senator Richard Burr Sold a Fortune in Stocks as G.O.P. Played Down Coronavirus Threat*, THE NEW YORK TIMES, Mar. 19, 2020, <https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html>.

⁴⁰ Sen. Diane Feinstein, Periodic Disclosure of Financial Transactions, Mar. 17, 2020, <https://efdsearch.senate.gov/search/view/paper/680b4c2d-8eea-48c5-b79e-df2754e37ac4/>; see also Sen. Diane Feinstein, Periodic Disclosure of Financial Transactions, Feb. 28, 2020, <https://efdsearch.senate.gov/search/view/paper/4c78ce9f-d842-4f36-9102-48e43377166b/>.

⁴¹ Eric Lipton and Nicholas Fandos, *Senator Richard Burr Sold a Fortune in Stocks as G.O.P. Played Down Coronavirus Threat*, THE NEW YORK TIMES, Mar. 19, 2020, <https://www.nytimes.com/2020/03/19/us/politics/richard-burr-stocks-sold-coronavirus.html>.

⁴² Sen. James Inhofe, Periodic Disclosure of Financial Transactions, Feb. 14, 2020, <https://efdsearch.senate.gov/search/view/ptr/f9e84e52-f7f3-4457-987e-a85d75f2a0d2/>.