

Wednesday, April 15, 2020

Omar Ashmawy
Chief Counsel and Staff Director
Office of Congressional Ethics
U.S. House of Representatives
P.O. Box 895
Washington, D.C. 20515

Re: Request for Investigation of Representative John Curtis (R-UT)

Dear Mr. Ashmawy:

Pursuant to Rule 3(A) of the Office of Congressional Ethics' ("OCE") Rules for the Conduct of Investigations, I respectfully request that you begin an immediate investigation into Representative John Curtis's apparent violations of the Stop Trading on Congressional Knowledge Act (the "STOCK Act") and House Ethics Rules. A periodic transaction report recently filed by Representative Curtis strongly suggests that he may have used nonpublic information related to the public health crisis caused by the spread of the novel Coronavirus, COVID-19 -- information that he derived from his official position -- for his own personal profit.

It is a foundational principle of Congressional ethics that Members of Congress "should not in any way use their office for private gain."¹ Each Member has a duty to "[c]onduct themselves at all times in a manner that reflects creditably on the House."² In a time of crisis, when millions of Americans face unprecedented economic uncertainty, it is difficult to imagine any act that reflects more poorly on the House than using information related to this public health crisis -- to which the public has no access -- to enhance a Member's own personal wealth.

In addition to the potential violations of federal law, this behavior has eroded public trust in our government at a time when that trust is more necessary than ever. I respectfully request that the Committee immediately investigate these allegations and take appropriate action against Rep. Curtis.

Factual Background

¹ U.S. House of Representatives, Committee on Standards of Official Conduct, 110th Cong., 2d Session, "House Ethics Manual," https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf.

Rep. Curtis represents Utah's Third Congressional District.³ After Senator Mitt Romney, Representative Curtis is the wealthiest member of Utah's Congressional delegation, with a net worth of up to \$15 million.⁴

As a Member of Congress, Rep. Curtis certainly has access to briefing and confidential information that could impact financial markets. Specifically, Rep. Curtis serves on the House Committee on Foreign Affairs, including the Subcommittee on Western Hemisphere, Civilian Security and Trade; and the Subcommittee on Asia, the Pacific and Nonproliferation. Additionally he serves as Co-Chair of the House Biomedical Research Caucus.⁵

On March 4, 2020, Curtis purchased up to \$15,000 in stock in the video conferencing service Zoom, which has since seen its usage increase twenty-fold due to the increase in remote work during the Coronavirus crisis.⁶ That same day, Rep. Curtis purchased up to \$15,000 worth of stock in Atlassian Corporation, another software company that develops tools used for remote workers, and up to \$15,000 of stock in Amazon.com.⁷ These purchases occurred more than a week before President Donald Trump declared a national emergency in response to the Coronavirus outbreak on March 13,⁸ and weeks before California's governor issued a stay-at-home order, the first of many to come in the following weeks.⁹ At that time, most members of the Republican party, led by President Trump, were still questioning the severity of the outbreak. Rep. Curtis himself did not issue a press release about the virus until March 20.¹⁰

On March 27, the same day the House of Representatives approved passage of the CARES Act, a \$2 trillion dollar economic relief package aimed to assist individuals and businesses affected by the crisis,¹¹ Rep. Curtis purchased up to \$50,000 of Amazon stock and up to \$15,000 worth of stock in Abbott Laboratories, the same day that Abbott received an FDA Emergency Use Authorization for their Coronavirus test.¹² He also purchased up to \$15,000 worth of stock in Las Vegas Sands casino¹³ as casinos feverishly lobbied to be included in a bailout package¹⁴.

³ Congressman John Curtis, <https://curtis.house.gov/> (last accessed Apr. 12, 2020).

⁴ Thomas Burr, "Rep. Curtis is Utah's wealthiest member of Congress, though Romney would easily top him if elected," The Salt Lake Tribune (May 21, 2018) <https://www.sltrib.com/news/politics/2018/05/17/rep-curtis-is-utahs-wealthiest-member-of-congress-though-romney-would-easily-top-him-if-elected/>.

⁵ <https://curtis.house.gov/committees-and-caucuses/>.

⁶ John Curtis, Periodic Transaction Report, (filed April 9, 2020) http://clerk.house.gov/public_disc/ptr-pdfs/2020/20016299.pdf (hereinafter "Curtis, Periodic Transaction Rept."); Zoom Blog, "A Message to our Users," (Apr. 1, 2020) <https://blog.zoom.us/wordpress/2020/04/01/a-message-to-our-users/>.

⁷ Curtis, Periodic Transaction Rept.; <https://www.atlassian.com/>.

⁸ Donald J. Trump, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁹ Jill Cowan, "Newsom Orders All Californians to Stay Home," New York Times (March 20, 2020) <https://www.nytimes.com/2020/03/20/us/coronavirus-california-stay-at-home-order.html>.

¹⁰ See Congressman John Curtis, "Press Releases," <https://curtis.house.gov/category/press-releases/>.

¹¹ Claudia Grisales, "President Trump Signs \$2 Trillion Coronavirus Rescue Package Into Law," NPR (March 27, 2020) <https://www.npr.org/2020/03/27/822062909/house-aims-to-send-2-trillion-rescue-package-to-president-to-stem-coronavirus-cr>.

¹² Curtis, Periodic Transaction Rept.; FDA Letter To Abbott Laboratories <https://www.fda.gov/media/136522/download> (March 27, 2020)

¹³ Curtis, Periodic Transaction Rept.; Atlassian Corporation, <https://www.atlassian.com/>.

¹⁴ Jeff Stein, Rachel Siegel and Jonathan O'Connell, "Casinos ask Congress for emergency aid as coronavirus toll sweeps industry," Washington Post (March 16, 2020) <https://www.washingtonpost.com/business/2020/03/16/casino-bailout-coronavirus-congress/>.

Although the March 27 stimulus package did not include funding to support the struggling oil industry,¹⁵ Rep. Curtis nonetheless purchased up to \$15,000 worth of stock in Chevron that same day.¹⁶ Eleven days later, members of Congress announced that they were introducing legislation aimed at assisting the oil and gas industry by financing a \$3 billion purchase of oil by the Federal government.¹⁷

Legal Analysis

According to the Stop Trading on Congressional Knowledge Act of 2012 (“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 derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities.”¹⁸ Thus, under the STOCK Act, a Member of Congress may not use “nonpublic information derived from such a 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.”¹⁹

In addition to the STOCK Act, which specifically addresses the use of nonpublic information by members of Congress and their staff, federal securities laws generally prohibit any use of manipulative or deceptive practices in the purchase or sale of securities.²⁰ Under SEC regulations, such manipulative or deceptive practices include the misappropriation of any material, nonpublic information in violation of a duty of trust or confidence owed to the source of the information.²¹ Material, nonpublic information includes “any information concerning a company, security, industry or economic sector . . . that is not available to the general public and which an investor would likely consider important in making an investment decision.”²² Knowing or willful violations of the securities antifraud statute can result in criminal prosecution, and can be punished with imprisonment of up to 20 years.²³ Securities laws also prohibit “tipping,” or passing material, nonpublic information on to others who may use that information to profit through securities trading.²⁴

Finally, the House Code of Official Conduct prohibits House members from profiting from their Congressional position, or from “entering into any personal financial transactions to take advantage of any confidential information obtained through performance of their official

¹⁵ Rachel Frazin, “Lawmakers announce legislation to fund government purchases of oil,” The Hill (Apr. 7, 2020)

<https://thehill.com/policy/energy-environment/491631-lawmakers-introduce-legislation-to-fund-government-purchases-of-oil>.

¹⁶ Curtis, Periodic Transaction Rept

¹⁷ Rachel Frazin, “Lawmakers announce legislation to fund government purchases of oil,” The Hill (Apr. 7, 2020)

<https://thehill.com/policy/energy-environment/491631-lawmakers-introduce-legislation-to-fund-government-purchases-of-oil>.

¹⁸ 15 USCA § 78u-1(g)(1); U.S. House Committee on Ethics, “New Ethics Requirements Resulting from the STOCK Act” (Apr. 4, 2012)

<https://ethics.house.gov/sites/ethics.house.gov/files/Stock%20Act%20Pink%20Sheet.pdf>.

¹⁹ Pub. L. No. 112-105, § 3, 126 Stat. 291, 292 (2012).

²⁰ 15 USCA § 78j(b).

²¹ 17 C.F.R. § 240.10b5-1.

²² U.S. House Committee on Ethics, “Rules Regarding Personal Financial Transactions,” (Nov. 29, 2011)

<https://ethics.house.gov/sites/ethics.house.gov/files/documents/fin%20trans%20pink%20sheet.pdf> (emphasis in original).

²³ 15 U.S.C. § 78ff(a).

²⁴ Rules Regarding Personal Financial Transactions at 2.

governmental duties.”²⁵ Confidential information includes information related to legislation and amendments prior to their public introduction, and information learned in private briefings available only to members of Congress and their staff.²⁶

Rep. Curtis’s April 9 periodic transaction report disclosed transactions that could lead him to profit from various aspects of the Coronavirus crisis. The timing of the March 4 investments in Amazon and technology software companies Zoom and Atlassian, all of which stood to benefit from millions of people being forced into their homes, suggest that Rep. Curtis may have had access to nonpublic information related to the crisis. Publicly, many officials, including Rep. Curtis himself, were not yet raising the alarm about the outbreak or encouraging widespread quarantines or social distancing. The extent of the stay-at-home orders that would eventually reach nearly every state, forcing millions of Americans to work from home, was not fully known by the public until weeks later. While we do not know what confidential information Rep. Curtis had access to, we do know that as the public health crisis worsened, he traded stocks that would be impacted by the crisis or Congressional actions designed to mitigate the crisis at an alarming rate. If Rep. Curtis, through nonpublic reports, briefings, or committee meetings, received any information that gave him reason to believe the crisis was more serious than he was indicating publicly, the use of that information to make investment decisions would be a clear violation of the STOCK Act.

The March 27 investments in Abbott Laboratories, Amazon.com, and Las Vegas Sands appeared to be targeted at profiting from companies that not only stood to benefit from the ongoing crisis, but also from the unprecedented stimulus package passed by the Federal government that same day. Although the details of the stimulus package were public once it was passed, given the speed with which the bill was negotiated and passed,²⁷ it seems improbable that Rep. Curtis would have been able to fully evaluate the potential benefits of the stimulus in time to make investment decisions had he not been relying on nonpublic information acquired prior to the public release of the bill.

Even more suspect, Rep. Curtis chose to invest in Chevron, which was not included in the stimulus bill; however it was later revealed that many lawmakers were in negotiations about legislative action aimed at benefiting oil companies. Immediate investigation is required to determine whether Rep. Curtis had access to nonpublic information that was material to his decision to make this investment, in violation of his duty of trust and confidence toward the American people with respect to information he learns through his position as a member of Congress

I urge OCE to commence an immediate investigation into Representative Curtis’s conduct to determine if any violation of the STOCK Act has occurred, or if he otherwise used his official position for personal profit in violation of federal law and House Ethics Rules.

²⁵ *Id.* at 2.

²⁶ *Id.* at 3.

²⁷ Jacob Pramuk, “Trump Signs \$2 trillion Coronavirus Relief Bill as the US Tries to Prevent Economic Devastation,” CNBC (Mar. 27, 2020) <https://www.cnbc.com/2020/03/27/house-passes-2-trillion-coronavirus-stimulus-bill-sends-it-to-trump.html>.

I understand that 18 U.S.C. § 1001 applies to the information I am providing. To the best of my knowledge and ability all evidence submitted was not obtained in violation of any law, rule or regulation.

Sincerely,

Kyle Herrig
President, Accountable.US