



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

November 28, 2022

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Chief Counsel
Office of Congressional Ethics
U.S. House of Representatives
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RE: Rep. Earl Blumenauer (Oregon)

Dear Mr. Ashmawy,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Congressional Ethics (OCE) immediately investigate whether Representative Earl Blumenauer's purchase of stock in a company directly related to his oversight role on the Health Subcommittee was in violation of conflict of interest laws.

I. Facts. On September 26, 2022, Blumenauer's wife purchased up to \$15,000 of stock shares of the biopharmaceutical company Amgen.¹ Then on October 4, the Department of Health and Human Services "announced it was spending \$290 million for supplies of Amgen's drug Nplate — a move that has resulted in Amgen surging by over 24% as of [November 10, 2022].²

Notably, Blumenauer is a member of the House Ways and Means Committee and its Health Subcommittee.³ The Health Subcommittee states it "handles legislation and oversight

¹ Rep. Blumenauer disclosed this transaction on October 5, 2022. Earl Blumenauer, Periodic Transaction Report, Clerk Of The House Of Representatives, Filed Oct. 5, 2022, available at: https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2022/20021808.pdf.

² Gabe Kaminsky, *Democratic Lawmaker Overseeing HHS Discloses Stock Buy Before Agency Sent Shares Flying With Massive Drug Purchase*, Washington Examiner, Nov. 10, 2022, available at: <https://www.washingtonexaminer.com/news/house/democratic-lawmakers-wife-biotech-biden-stocks>; Press Release, "HHS Purchases Drug For Use In Radiological And Nuclear Emergencies," Administration For Strategic Preparedness & Response, Oct. 4, 2022, available at: <https://aspr.hhs.gov/newsroom/Pages/ARS-Oct2022.aspx>; Amgen Inc. Stock, Yahoo Finance, Nov. 22, 2022, available at: <https://finance.yahoo.com/quote/AMGN/>.

³ *Id.*; Ways & Means Committee, Full Committee, <https://waysandmeans.house.gov/subcommittees/ways-and-means-117th-congress>.

related to programs paying for health care, health delivery systems, or health research . . . [and] oversees the Department of Health and Human Services administration.”⁴ The Health and Human Services Administration (HHS) “said it bought Nplate, which treats blood cell injuries after nuclear and radiological emergencies, to be prepared for possible national security threats. An agency spokesperson told *Reuters* on Oct. 7 the purchase was made with the Russia and Ukraine war in mind, given there is U.S. concern that Russian President Vladimir Putin could unleash nuclear weapons.”⁵

II. Law. The House Ethics rules require Members to “conduct themselves at all times in a manner that reflects creditably on the House” and to adhere to the spirit as well as the letter of the ethics rules.⁶ Specific rules require Members to refrain from taking official action when the Member has either an apparent or actual conflict of interest, and Members are prohibited from using their official position and information obtained from it for personal financial gain.

A conflict of interest exists when a Member’s private affairs appear to, or actually do, conflict with their ability to officially act on behalf of the public interest.⁷ “The ultimate concern ‘is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests.’”⁸ Because the integrity of government action is at risk, the ethics rules require Members to refrain from official action where there is even an inference of a conflict, as well as where there is an actual conflict.⁹ Thus, a conflict arises when a Member’s personal interest creates doubt the Member can act impartially and in the public interest.¹⁰ “At

⁴ Gabe Kaminsky, *Democratic Lawmaker Overseeing HHS Discloses Stock Buy Before Agency Sent Shares Flying With Massive Drug Purchase*, Washington Examiner, Nov. 10, 2022, available at: <https://www.washingtonexaminer.com/news/house/democratic-lawmakers-wife-biotech-biden-stocks>.

⁵ *Id.*

⁶ House Ethics Manual, Comm. on Standards of Official Conduct, U.S. House of Reps., at 1, 186 (2008 ed.) (available at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf).

⁷ *Id.* at 187. “A conflict of interest is generally defined as a situation in which an official’s private financial interests conflict or appear to conflict with the public interest. . . . At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties.” *Id.* at 250-51.

⁸ *Id.* at 187 (citing Association of the Bar of the City of New York Special Comm. on Congressional Ethics, Congress and the Public Trust 39 (1970)).

⁹ *Id.* at 186 (the Standards Committee advises Members to “to avoid situations in which even an inference might be drawn suggesting improper conduct.”); *Id.* at 251 (“The Standards Committee has admonished all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”).

¹⁰ *Id.* at 250-51; *see also id.* at 185-86 (citing House Rule 25, clause 1(a)(2)) (stating a “key provision” of the House Code of Official Conduct prohibits a Member from using his official position for personal gain, including pecuniary gain).

the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests.”¹¹

There are two separate types of official action in a conflict of interest analysis: (1) voting on legislation¹² and (2) other official action.¹³ With respect to voting, a Member should not vote on legislation in which he or she has “a direct personal or pecuniary interest.”¹⁴ However, a much stricter conflict analysis applies to other acts connected to a Member’s official duties because these actions “entail a degree of advocacy above and beyond that involved in voting.”¹⁵ “Moreover, such actions may implicate the rules and standards, discussed above, that prohibit the use of one’s official position for personal gain.”¹⁶

In assessing whether a Member has a conflict that prohibits official action, the Member’s spouse’s employment and investments are also fully considered as the Member’s own.¹⁷

III. Rep. Blumenauer’s Conflict of Interest. It is important to first note that the law does not distinguish between whether stock shares were purchased in the Member’s name or the Member’s spouses name—in each instance the stocks are treated as the Members. In this case the conflict of interest analysis is straightforward: Blumenauer’s wife bought shares of a company eight days before the Department of Health and Human Services, which Blumenauer oversees as a member of the Health Subcommittee, publicly announced it was purchasing hundreds of

¹¹ *Id.* at 187. A Member is prohibited from corruptly using his or her official position for personal or pecuniary gain. *Id.* at 250-51; *see also id.* at 185-86 (citing House Rule 25, clause 1(a)(2)) (stating a “key provision” of the House Code of Official Conduct prohibits a Member from using his official position for personal gain, including pecuniary gain).

¹² “Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.” *Id.* at 234 (quoting House Rule 3).

¹³ *Id.* at 237.

¹⁴ “Since legislation considered by Congress affects such a broad spectrum of business and economic endeavors, a Member of the House may be confronted with the possibility of voting on legislation that would have an impact upon a personal economic interest.” *Id.* at 234. In drawing the distinction of when a Member has a conflict that disqualifies him from voting, the principle generally applied has been “where legislation affected a class as distinct from individuals, a Member might vote.” *Id.* at 234. On the other hand, the Ethics Committee has advised “it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests.” *Id.* at 237. Essentially, in determining whether a conflict prohibits voting, the relevant factors to consider are whether the legislation affects a large group and the Member’s interest is small in the group.

¹⁵ *Id.* at 237.

¹⁶ *Id.* at 237.

¹⁷ *See, e.g., id.* at 187-88 (“outside employment of a spouse”); *id.* at 244 (employment); *id.* at 245 (spouse’s income generally accrues to Member’s benefit); *id.* at 253 (investments). *See also id.* at 245 (prohibiting a Member’s spouse from lobbying the Member).

millions of dollars of a drug from that company—which caused the stock to substantially increase in value.¹⁸

Blumenauer’s role on the subcommittee requires that a strict conflict of interest analysis applies because it involves direct oversight and a high degree of advocacy. First, it is clear a conflict of interest exists in this case: Blumenauer (though his wife) directly owns stock in a company and this ownership affects his ability to oversee the HHS’s purchase of hundreds of millions of dollars of a drug from that same company. Not only is there an appearance of a conflict that casts doubt on his ability to act solely on behalf of the public interest, but additionally his role on the subcommittee directly affects his personal financial interests. Second, the timing of Blumenauer wife’s purchase of stock just eight days before HHS publicly announced its nearly \$300 million dollar purchase from this company, which Blumenauer likely knew about beforehand due to his position on the subcommittee, demonstrates the OCE must determine whether Blumenauer used his official position for private gain.

This is not the first time Blumenauer’s stock purchasing has raised the public’s concern of a conflict of interest. On September 13, 2022, the New York Times reported that Blumenauer’s wife “bought or sold stocks or bonds in several health care companies, including CVS Health and UnitedHealth Group. Both companies offer Medicare Advantage plans Blumenauer sits on the House Ways and Means Committee and its health subcommittee, which have jurisdiction over Medicare.”¹⁹ Again, Blumenauer’s stock ownership clearly appears to affect his ability to act impartially, but further his role on the subcommittee directly affects his personal financial interests.

The ethics rules function to maintain the integrity of government action. The Office of Congressional Ethics is responsible for ensuring each Representative fulfills the public trust inherent in the office and that they comply with the House’s ethical standards. Therefore, we urge the Board to immediately investigate whether Representative Blumenauer (1) used information obtained from his official role on the Health Subcommittee and (2) further violated conflict of interest laws with his role on the Health Subcommittee which can directly affect his personal financial interests.

To the best of my knowledge and ability, all evidence submitted was not obtained in violation of any law, rule, or regulation. Further, I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

¹⁸ Gabe Kaminsky, *Democratic Lawmaker Overseeing HHS Discloses Stock Buy Before Agency Sent Shares Flying With Massive Drug Purchase*, Washington Examiner, Nov. 10, 2022, available at: <https://www.washingtonexaminer.com/news/house/democratic-lawmakers-wife-biotech-biden-stocks>; Amgen Inc. Stock, Yahoo Finance, Nov. 22, 2022, available at: <https://finance.yahoo.com/quote/AMGN/>.

¹⁹ Alicia Parlapiano, Adam Playford, & Kate Kelly, *These 97 Members of Congress Reported Trades in Companies Influenced by Their Committees*, New York Times, September 13, 2022, available at: <https://www.nytimes.com/interactive/2022/09/13/us/politics/congress-members-stock-trading-list.html>.

Sincerely,

/s/Kendra Arnold

Kendra Arnold

Executive Director, Foundation for Accountability & Civic Trust