

March 5, 2020

The Hon. James Lankford, Chairman  
The Hon. Christopher A. Coons, Vice-Chairman  
Senate Select Committee on Ethics  
220 Hart Office Building  
Washington, DC 20510

RE: Request for Investigation, The Hon. Charles Schumer

Dear Senators Lankford and Coons:

Landmark Legal Foundation requests that the U.S. Senate Select Committee on Ethics investigate and determine whether recent public statements by Sen. Charles Schumer constitute improper conduct which may reflect upon the Senate. The Senate must immediately reprimand, if not censure, Sen. Schumer for his outrageous and dangerous attack on Supreme Court Justices Gorsuch and Kavanaugh. This is deadly serious. Sen. Schumer's thinly veiled personal threats on these justices may well inflame the unhinged and incite violence.

On March 4, 2020, while speaking at a public rally on the steps of the U.S. Supreme Court during oral argument in an abortion provider case (*June Medical Services v. Russo*) Sen. Schumer made the following statements:

"I want to tell you, Gorsuch. I want to tell you, Kavanaugh- you have released the whirlwind and you will pay the price. You won't know what hit you if you go forward with these awful decisions."

Jan Wolfe and Lawrence Hurley, "U.S. chief justice slams Schumer for 'dangerous' comment on justices in abortion case," Reuters, Mar. 4, 2020.

These statements may violate criminal provisions of federal law. 18 U.S.C. § 875(c) (interstate communication containing a threat of injury); 18 U.S.C. § 1503(a) (threats of force in an effort to intimidate an officer of a court). A federal judge is an "officer in or of" the court within the meaning of § 1503. *United States v. Margoles*, 294 F.2d 371, 373 (7th Cir. 1961) *cert. denied*, 368 U.S. 930, 82 S. Ct. 367, 7 L. Ed. 2d 193 (1961). At a minimum, Sen. Schumer's statements appear to be improper conduct that reflects upon the Senate.

This Committee's jurisdiction is not limited to violations of specific Senate rules. Senate Resolution 338, as amended, gives the Select Committee the authority to investigate Members who engage in "improper conduct which may reflect upon the Senate." U.S. Congress, Senate Select Committee on Ethics, Senate Ethics Manual, 2003 Edition, 108th Cong., 1st sess., S. Pub.

108-1 (Washington: GPO, 2003), p. 432. (Hereinafter, Senate Ethics Manual). In fact, “The Senate has disciplined Members for conduct that it has deemed unethical or improper, regardless of whether it violated any particular law or Senate rule or regulation.” *Id.* at 12. Such conduct “has provided the basis for the Senate’s most serious disciplinary cases in modern times.” *Id.* at 432.

“Improper conduct” as set forth in the Senate Ethics Manual, Appendix E, “can be given meaning by reference to generally accepted standards of conduct, the letter and spirit of laws and Rules.” *Id.* at 433. Actions amount to “improper conduct” when they are “so notorious or reprehensible” that they “could discredit the institution as a whole, not just the individual...” *Id.* at 432. In these situations, the Senate is compelled to act to “protect its own integrity and reputation.” *Id.*

In the past, the Senate has censured members for reading confidential communications on the Senate floor, and expelled members for accepting stock at reduced prices and then concealing the transaction. *Id.* at 433. Senators have been condemned for employing individuals with conflicts of interest and for not cooperating with Senate investigations. *Id.* These cases did not involve conduct that violated any law, rule, or regulation, but nevertheless, it was found to be in violation of “accepted standards and values controlling Senators’ conduct.” *Id.* at 434.

In more recent years, the Committee has reprimanded a Senator who failed to ensure separation of fund raising and official activities. *Id.* It also recommended expelling a member who abused his power by engaging in eighteen unwanted and unwelcome sexual advances over a period of twenty-one years. *Id.* at 435.

Sen. Schumer’s statements directed at justices of the U.S. Supreme Court are within the same realm of this past unethical conduct. His statements may have a chilling effect on the administration of justice. They may even incite violence against them. A threat against members of the federal judiciary reflects poorly on the Senate. This is greatly exacerbated by Sen. Schumer’s leadership role. He occupies one of the highest positions in the U.S. Senate as Minority Leader.

Sen. Schumer should have appreciated the seriousness of his comments. When President Trump recently criticized a federal judge, Sen. Schumer described this as “attacking” a judge, requiring the Chief Justice’s direct defense of the “independence of the federal judiciary.”

“With President Trump publicly attacking a judge: Now would be the time for Chief Justice Roberts to speak up. Now would be the time for the Chief Justice to directly and specifically defend the independence of the federal judiciary.”

Emma Colton, “Schumer called on Roberts to rebuke Trump for “attacking” judge three weeks before threat to conservative justices,” *Washington Examiner*, Mar. 5, 2020.

Landmark requests that the Senate Select Committee on Ethics investigate whether Sen. Schumer has engaged in improper conduct warranting discipline. If it finds that a violation has occurred, the Committee has a variety of remedial actions at its disposal, ranging from

recommendations of censure, reprimand or expulsion. High level members of the Senate should not avoid accountability when they make reckless and dangerous public statements that possibly violate the law or incite violence against the judiciary.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Richard P. Hutchison". The signature is written in a cursive style with a large, sweeping initial 'R'.

Richard P. Hutchison  
President