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LEGISLATIVE PROPOSALS AND TAX LAW RELATED TO PRESIDENTIAL AND VICE-PRESIDENTIAL TAX RETURNS

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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LEGISLATIVE PROPOSALS AND TAX LAW RELATED TO PRESIDENTIAL AND VICE-PRESIDENTIAL TAX RETURNS

THURSDAY, FEBRUARY 7, 2019

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to call, at 3:16 p.m., in Room 1100, Longworth House Office Building, the Honorable John Lewis [Chairman of the Subcommittee] presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE CONTACT: (202) 225-3625
January 31, 2019
No. OV-1

Chairman Lewis Announces Oversight Subcommittee Hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns

House Ways and Means Oversight Subcommittee Chairman John Lewis announced today that the Subcommittee will hold a hearing, entitled "Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns," on Thursday, February 7, 2019, at 2:00 p.m., in room 1100 of the Longworth House Office Building.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Thursday, February 21, 2019.** For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you require special accommodations, please call (202) 225-3625 in advance of the event (four business days' notice is requested). Questions regarding special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at http://www.waysandmeans.house.gov/

###

Chairman LEWIS. The Subcommittee will come to order. I regret in the delay. We had some votes on the floor.

Good afternoon to everybody. Let me begin by congratulating the Ranking Member, Mr. Kelly, on his appointment to this Subcommittee. I hope that we will continue the good and thoughtful work on behalf of the American taxpayers. We have been called. We have been chosen to lead at this time in our history.

I would also like to welcome the new and returning Members of the Oversight Subcommittee. I look forward to working with each and every one of you in the 116th Congress.

During today's hearing, we will examine a topic of great interest to the American people. We will review whether a President, vice president, or any candidate for these office should be required by law to make their tax return available to the public. In other words, we will ask the question: Does the public have a need to know that a person seeking or holding the highest office in our country obeys the tax laws?

To help inform our thinking, we will review the voluntary release of tax return by Presidents and others. The Federal tax laws that

protect taxpayer's information recent bill, including H.R. 1, that would require Presidents and vice presidents to disclose their tax return, an Internal Revenue Service tax return filed by President and vice president.

This afternoon, I am reminded that over 45 years ago, we were in a situation that is not much different than today. Many of you are old enough to remember when President Nixon faced questions about his Federal income taxes. During a press conference call for review by Congress of his return, he said, In all of my years of public life, I have never profited, never profited from public service. And in my many years of public life, I welcome this kind of examination, because people have got to know whether or not their President is a crook.

He concluded by saying, Well, I am not a crook, even though the IRS wrote him a letter stating his return wasn't correct. The investigation by Congress found that he owed almost $480,000 in tax and interest.

The question that arose then and remain today are, first, should the public know whether a person who is running for the office or who is currently leading our Nation paid the correct amount of tax? In the case of Nixon, the answer was yes.

Secondly, is it fair to expect the IRS to enforce Federal tax law against the President who is the head of the executive branch and has final control of the agency? In the case of Nixon, the answer was no.

These and other grave questions require thoughtful and serious consideration. We have to do the right thing. We are called to do the right thing. We have been selected. We have been chosen.

I thank our experts for joining us today, and I look forward to their testimony.

[The prepared statement of Chairman Lewis follows:]

LEWIS OPENING STATEMENT AT HEARING ON LEGISLATIVE PROPOSALS AND TAX LAW RELATED TO PRESIDENTIAL AND VICE-PRESIDENTIAL TAX RETURNS

Feb 7, 2019 | Press Release

(As prepared for delivery)

Good Afternoon. Let me begin by congratulating the Ranking Member, Mr. Kelly, on his appointment. I hope that we will continue the good and thoughtful work on the behalf of American taxpayers. I would also like to welcome the new and returning Members to the Oversight Subcommittee. I look forward to working with each and every one of you in the 116th Congress.

During today's hearing, we will examine a topic of great interest to the American public. We will review whether a president, vice-president, or any candidate for these offices should be required by law to make their tax returns available to the public. In other words, we ask the question– "Does the public have a need to know that a person seeking or holding the highest office in our country obeys the tax laws?"

To help inform our thinking, we will review: the voluntary release of tax returns by presidents and others; the federal tax laws that protect taxpayer information; recent bills -- including H.R. 1 – that would require presidents and vice-presidents to disclose their tax return; and Internal Revenue Service audits of tax returns filed by presidents and vice-presidents.

This morning, I am reminded that, over 45 years ago, we were in a situation that is not much different than today when President Nixon faced questions about his federal income taxes. During a press conference calling for a review by Congress of his returns he said, and I quote,

"In all my years of public life, I have never profited -- never profited -- from public service . . . and . . . in my years of public life I welcome this kind of examination because people have got to know whether or not their president is a crook. Well, I am not a crook."

Well, even though the Internal Revenue Service wrote him a letter stating his returns were correct, the investigation by Congress found that he owed almost four-hundred and eighty thousand dollars in tax and interest.

The questions that arose then and remain today are -- first, should the public know whether the person, who is running for the office or who is currently leading our nation, paid the correct amount of tax? In the case of Nixon, the answer was "yes."

Second, is it fair, based on internal policies alone, to expect the Internal Revenue Service to enforce the federal tax law against the president, the head of the Executive Branch who has ultimate control of the agency? In the case of Nixon, the answer was "no."

These and other grave questions on the state of our democracy require thoughtful and serious consideration.

I believe that we have a mission, an obligation, and a mandate to improve the integrity, access, and accountability of our country's voting and electoral processes. This is the reason that House Democrats introduced H.R. 1, the For the People Act, which includes the Voter Empowerment Act, legislation that I championed for many years with Majority Leader Steny Hoyer, Majority Whip James Clyburn, Judiciary Committee Chairman Jerrold Nadler, and House Administration Chairwoman Zoe Lofgren. It is a good and necessary bill inspired by a critical national conversation.

Our congressional and constitutional duty to protect the foundation of our nation must always rise above partisanship and politics. Securing, improving, and preserving our democracy requires serious consideration, attention, and oversight. It is not a Democratic or a Republican query; it is an American responsibility.

Again, I thank our experts for joining us today, and I look forward to their testimony.

###

Chairman LEWIS. Now I am pleased to recognize the Ranking Member for his opening statement, Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman, and thanks for holding this hearing today.

As this is my first hearing as Republican leader on the Oversight Committee, I want to start by saying that I very much look forward to working together with you, as well as other Members of the Subcommittee, specifically on issues of bipartisan concern.

Personally, I must say that when I found out we would be serving together on this Committee, I was particularly delighted. I so fondly remember our time in Alabama as we walked across the Edmund Pettus Bridge with my grandson back in March of 2015 to mark the 50th anniversary of the Selma to Montgomery march. At that time, George was 8 years old, and you were so gracious with him. We have many pictures of the two of us talking with George.

And one of the things that George and I talked about, I said, Georgy, you and I are going to come back for the 100th anniversary of the bridge and we are going to walk across together. He said, well, Grandpa, how old are you now? I said, I am 65. He said, Grandpa, you are going to really be old. And I said, well, maybe you can push me across the bridge.

But you took time to spend with that little 8-year-old, and he still has those pictures and those memories to go with it. So serving with you on this Committee is phenomenal.

And I know that you and Chairman Jenkins had a good working relationship, particularly with things like the bill to redesign the IRS. And I would like to continue to build upon that foundation in this Congress also.

The primary role of this Subcommittee, I believe, Government Oversight, is an important role for every Member of Congress, because we are the taxpayers' watchdogs here in Washington as well as being legislators. Government oversight is critical to the protection of taxpayers and the safety of all Americans.

As Senator Grassley once said, oversight is about keeping faith with the taxpayers and giving people confidence that the government plays by the rules or is held accountable. That is a role I hope to play on this Committee, and I look forward to serving with you in this capacity, Mr. Chairman.

Now, for today's hearing, I want to start by stating the obvious. All Americans, every single American has a right to the privacy and of the personal information contained in their tax return. That is why we have a statute in law, 6103, that covers every American from the President to your next-door neighbor and your family. It mandates that the Federal Government must keep tax returns and tax return information private.

Congress enacted taxpayer protections that are embedded in Section 6103 of the Tax Code to ensure every American's privacy and to prevent the use of taxpayer information from being made public. Americans should be able to trust that the Federal Government or some unelected bureaucratic in Washington is not going to publicly release their tax returns without the taxpayer's consent.

Tax returns can have a lot of sensitive information in them. It is not just all income, expenses, and deductions. There is information on where you live, what you do for a living, what kind of car you drive, information on your bank account, which cell phone is yours, whether you have health insurance, and the names and Social Security numbers of your spouse and all of your children.

Keeping this information confidential is critical to the integrity of the U.S. tax system, which is only functional because taxpayers voluntarily pay their taxes. According to the National Taxpayer Advocate, 98 percent of all tax revenue paid by American taxpayers is paid voluntarily. That means that only a small, percentage, 2 percent of taxes are collected through audits and enforcement. Ninety-eight percent is voluntarily paid. Ninety-eight percent of anything is a lot.

So I have to take a closer look and ask why. I believe this is because of the trust the American taxpayers have in our system and that privacy is at the foundation of that trust.

Now, some of my colleagues on the other side of the aisle have suggested using this Committee as an avenue to obtain and release the President's tax returns in the name of transparency. As leaders of the Ways and Means Committee, I don't believe we have to choose between protecting privacy and promoting transparency among public officials. To begin with, Congress is prohibited by law from examining and making public the private tax returns of Americans for political purposes. Such an abuse of power would open a Pandora's box, and it would be tough to get a lid back on. It would set a very dangerous precedent.

And the question is where does it end? What about the tax returns of the Speaker, the Members of Congress, or Federal employees or, for that matter, any political donors? There is no end in sight for those whose tax information may be in jeopardy.

Thankfully, violating taxpayer privacy is not the only option for increasing transparency. I support the current ethics review in place which ensure that Presidents and vice presidents are held accountable to taxpayers. My colleagues on the other side of the aisle have voiced the need to have experts review the President's tax return with a fine-tooth comb. But isn't that the exact reason why the IRS, the agency with just that level of expertise, conducts mandatory audits of the President and vice president every year? Yes, that's right, the IRS audits the President and the vice president every single year, whether he or she is a Republican or a Democratic. I don't think most Americans know that is the case. I certainly didn't know it until I started doing some research myself and inquiring.

In addition to IRS audits, there are also financial disclosures required. If my colleagues have a valid concern with the financial disclosure requirements, then let's come together to legislate a thoughtful solution to require additional disclosures. If there are challenges in obtaining required documents for disclosure, then let's look at how we can make that process better and more transparent. But the reckless sharing of a taxpayer's private information for political purposes would be unprecedented and completely outside the bounds of Congress' role as a legislative body.

Our role is oversight and certainly not overreach. And we can and must do better. Therefore, I look forward to hearing from our witnesses on how to do that better, that is, how to best protect our American taxpayers.

Thank you, Mr. Chairman. It is great to be with you.

[The prepared statement of Mr. Kelly follows:]

WAYS AND MEANS

REPUBLICANS | KEVIN BRADY, REPUBLICAN LEADER

Kelly Opening Statement at Hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns

February 7, 2019 - PRESS RELEASE

Rob Damschen
Jesse Solis
(202) 226-4774

WASHINGTON, D.C. – The top Republican on the House Ways and Means Oversight Subcommittee Mike Kelly (R-PA) delivered the following opening statement at a Subcommittee Hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns.

Before the start of today's hearing, Rep. Kevin Brady (R-TX), the top Republican on the Ways and Means Committee, and Rep. Kelly sent a letter to Ways and Means Chairman Richard Neal (D-MA). CLICK HERE to read the full letter.

CLICK HERE to watch the hearing.

Remarks as prepared for delivery:

> *"Thank you, Mr. Chairman, for holding this hearing today.*
>
> *"As this is my first hearing as the Republican Leader on the Oversight Subcommittee, I want to start by saying that I very much look forward to working together with you, Chairman Lewis — as well as all the other Members of the Subcommittee, specifically on issues of bipartisan concern.*

"Personally, I must say that when I found out we'd be serving together on this Committee, I was particularly delighted. I so fondly remembered our time in Alabama as we walked across the Edmund Pettus Bridge with my grandson back in March of 2015 to mark the 50th anniversary of the Selma to Montgomery march. It was a great day.

"I know that you and Chairman Jenkins had a good working relationship, particularly with things like the bill to redesign the IRS, and I would like to continue to build upon that foundation this Congress.

"As to the primary role of this Subcommittee, I believe government oversight is an important role for every Member of Congress — we are the taxpayer's 'watchdogs' here in Washington — as well as legislators.

"Government oversight is critical to the protection of taxpayers and the safety of all Americans. As Senator Grassley once said 'oversight is about keeping faith with the taxpayers and giving people confidence that the government plays by the rules or is held accountable.'

"That is the role I hope to play on this Committee and look forward to serving with you in this capacity, Mr. Chairman.

"For today's hearing, I want to start by stating the obvious — all Americans have a right to privacy in the personal information contained in their tax returns.

"That's why we have a statute in law — 6103 — that covers every American from the president to your neighbor and your family. It mandates that the federal government must keep tax returns and tax return information private.

"Congress enacted taxpayer protections embedded in Section 6103 of the tax code to ensure every American's privacy and to prevent the abuse of taxpayer information.

"Americans should be able to trust that the federal government or some unelected bureaucrat in Washington is not going to publicly release their tax returns without their consent.

"Tax returns can have a lot of sensitive information in them. It's not all just income, expenses, and deductions. There can be information on where you live, what you do for a living, what kind of car you drive, information on your bank account, which cell phone is yours, whether you have health insurance, and the names and social security numbers of your spouse and all of your children.

"Keeping this information confidential is critical to the integrity of the U.S. tax system which is only functional because taxpayers voluntarily pay their taxes.

"According to the National Taxpayer Advocate, ninety-eight percent of all tax revenue paid by American taxpayers is paid voluntarily.

"That means only a small percentage of taxes are collected through audits and enforcement. Ninety-eight percent!

"Ninety-eight percent of anything is a lot, so I have to take a closer look and ask 'why?' I believe this is because of the trust American taxpayers have in our tax system and privacy is at the foundation of that trust.

"Now, some of my colleagues on the other side of the aisle have suggested using this Committee as an avenue to obtain and release the President's tax returns in the name of transparency. As leaders of the Ways and Means Committee, I don't believe we have to choose between protecting privacy and promoting the transparency among public officials.

"To begin with, Congress is prohibited by law from examining and making public the private tax returns of Americans for political purposes. Such an abuse of power would open a Pandora's box. It would set a very dangerous precedent. And where does it end? What about the tax returns of the Speaker, Members of Congress, or federal employees? There is no end in sight for whose tax information may be in jeopardy.

"Thankfully, violating taxpayer privacy is not the only option for increasing transparency. I support the current ethics reviews in place which ensure presidents and vice presidents are held accountable to taxpayers. My colleagues on the other side of the

aisle have voiced the need to have experts review the President's tax returns 'with a fine-toothed comb.'

"But isn't this the exact reason why the IRS – the agency with just that level of expertise – conducts mandatory audits of the president and vice president every year?

"Yes, that's right, the IRS audits the President and the Vice President every single year — regardless of whether he or she is Republican or Democrat.

"I don't think most Americans know that's the case. I certainly didn't know until I started doing some research and inquiring.

"In addition to annual IRS audits, there are also annual financial disclosures required. If my colleagues have valid concerns with the financial disclosure requirements, then let's come together to legislate a thoughtful solution to require additional disclosures.

"If there are challenges in obtaining required documents for disclosure, then let's look at how we can make that process better — and more transparent.

"But the reckless sharing of a taxpayer's private information for political purposes would be unprecedented and completely outside of the bounds of Congress's role as a legislative body.

"Our role of oversight should be that of overreach. We can do better.

"Therefore, I look forward to hearing from our witnesses on how to do that better — that is, how best to protect the American taxpayer."

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Chairman LEWIS. Well, thank you, Mr. Kelly. And thank you for your wonderful comments about our trip to Alabama with your grandson George.

Mr. KELLY. Yes, with George.

Chairman LEWIS. Without objection, all Members' opening statements will be made part of the record.

Now we will hear from our panel. I ask that each of you limit your testimony to 5 minutes. I know you have been so patient. You have been waiting for a long time. So you can, you know, cut it as short as possible. We will not object. Without objection, your entire statement will be included in the record.

It is now my pleasure to introduce the director of the Tax History Project, Mr. Joseph Thorndike.

You may begin, sir.

STATEMENT OF JOSEPH J. THORNDIKE, DIRECTOR OF THE TAX HISTORY PROJECT, TAX ANALYSTS

Mr. THORNDIKE. Good afternoon, Chairman Lewis, Ranking Member Kelly.

Chairman LEWIS. I should have said Dr. Thorndike.

Thank you, Doctor.

Mr. THORNDIKE. Thank you.

It is an honor and privilege to be here today to talk about the long voluntary tradition of tax return disclosure by American Presidents, vice presidents, and major party nominees.

As has been said, I am Joseph Thorndike, director of the Tax History Project at Tax Analysts, a nonprofit, nonpartisan provider of tax information. As part of my job, I am the curator of a collection—an electronic collection of Presidential tax returns. I speak today on my own behalf, not for any organization.

I will be making two main points. First, for more than 40 years, American Presidents have been making substantial voluntary disclosures of personal tax information. Since 1977, those disclosures have been annual, with each sitting President releasing a complete tax return. Disclosures by vice presidents have been nearly as consistent. And major party nominees, while generally restricting their disclosures to campaign years, have also released at least one complete tax return and sometimes many more.

This unbroken string of disclosures ended in 2016 when first candidate and then President Donald Trump declined to release any personal tax information.

Secondly, this tradition of voluntary tax disclosure is fragile. By its nature, a tradition can lack clear standards and procedures. It tends to vary and change and perhaps to even weaken over time. Some political leaders have resisted or dragged their feet about disclosure. Until 2016, all ultimately chose to comply. But absent clear, binding, bright-line requirements, the nature of that compliance has varied considerably. That variability has underscored the vulnerability of the tradition itself.

Let me talk just briefly about origins, which the chairman has already mentioned. Rarely does the hand of history weigh quite so heavily on current policy as it does around this topic. Over the past four decades, American politicians have been releasing their per-

sonal tax returns because President Nixon chose to release his personal tax returns, albeit under some duress.

Nixon's tax troubles came to light in a lawsuit that happened to mention a large deduction he had taken for the donation of his vice presidential papers to the National Archives. That revelation gave rise to months of speculation and ultimately a leak from within the IRS. To help quell the scandal, Nixon released 4 years of personal returns and invited the Joint Committee on Internal Revenue Taxation, as it was then called, to examine those returns. It is worth noting that Nixon made this release while already under audit by the Internal Revenue Service.

Beginning with Jimmy Carter, every President through Barack Obama has opted to release a complete tax return during each year in which he has held office. The same is true for vice presidents since Walter Mondale, including Vice President Pence.

Similarly, beginning in 1976 and continuing through 2012, every major party nominee and his or her running mate has made at least one significant disclosure. From 1980 to 2012, these have included at least one complete tax return and sometimes as many as 30.

While Presidents, vice presidents, and major party nominees have generally observed the tradition of disclosure, there have been occasional issues, especially around the disclosure of tax returns filed by candidate spouses, some of which have included partnership and business returns that those spouses were disinclined to release.

In addition, the 2016 election featured numerous incomplete tax disclosures with candidates from both parties opting to release just the Form 1040 rather than a complete return. It bears notice that if Nixon had released only his Form 1040 in 1973, investigators would have been unable to discover the most serious problems with his returns.

I would like to turn briefly to the subject of these Presidential audits that have already been mentioned. In 1977, the IRS established new procedures, still in force, requiring an annual audit for every President and vice president while in office. According to IRS officials at the time, the policy was established in light of, quote, everything that has happened.

The past in question was Nixon's, and the Nixon returns had actually been audited twice, the second audit finding numerous serious problems. The first had found none and it instead concluded with a commendation for the President from the IRS for the care shown in the preparation of his returns. A routine politeness maybe, but one that was disconcerting in retrospect.

And indeed, that episode underscored a key question both at the time and now: Can we rely on the IRS to fairly and vigorously enforce the tax laws when applied to a President? Doubts about the answer to that question are what prompted Nixon to make his release essentially allowing for what we would today call a crowdsourced backstop to the IRS audit. And until recently, that backstop remained in place.

In conclusion, I believe that the four-decade tradition of return disclosure is clearly imperiled most seriously by President Trump's refusal to release his returns, but also by the growing popularity

of these partial disclosures. I believe we would all be better off, candidates, the news media, historians, and public, if this informal tradition were transformed into something more substantial, well-defined, and legally binding.

Absent clear standards and procedures, a tradition can be interpreted, manipulated, and ultimately diminished by anyone reluctant to observe it. And the indeterminacy of a tradition is also an invitation to endless begging, pleading, and shaming, none of which is good for the body public.

I am happy to answer anybody's questions.

Chairman LEWIS. Thank you very much.

[The prepared statement of Mr. Thorndike follows:]

Testimony of Joseph J. Thorndike, Ph.D.
Director, Tax History Project
Tax Analysts[1]

Before the Subcommittee on Oversight of the
Committee on Ways and Means
U.S. House of Representatives

February 7, 2019 2:00 p.m.

Voluntary Tax Return Disclosure by U.S. Presidents, Vice Presidents, and Major Party Nominees

Good afternoon, Chairman Lewis, Ranking Member Kelly, and Members of the Committee. It is an honor and a privilege to appear before you to discuss the long tradition of voluntary tax return disclosure by American presidents, vice presidents, and major party nominees for these offices.

My name is Joseph Thorndike. I am the director of the Tax History Project at Tax Analysts, a nonprofit, nonpartisan provider of tax information. I'm the author or editor of several books and numerous articles on the history of American taxation. Perhaps most to the immediate point, I am also the curator of an electronic collection of presidential tax returns. With one exception, all the returns in our collection were voluntarily released by American presidents, vice presidents, and candidates for both offices (or their heirs).

I will focus my comments on the origin and development of this informal tradition of voluntary tax return disclosure, exploring the reasons for its remarkable longevity as well as its evident fragility.

I will make two main points:

First, for more than 40 years, American presidents have been making substantial, voluntary disclosures of personal tax information. Since 1977, those disclosures have been annual, with each sitting president releasing a complete tax return, typically in April, shortly after its filing. Disclosures by vice presidents have been nearly as consistent and complete. Major party nominees, while generally restricting their disclosures to election years, have also released at least one complete tax return while running for office, and sometimes many more.

This unbroken string of disclosures ended in 2016, when then-candidate Donald Trump declined to release any personal tax information.

[1] The views expressed in this testimony are my own and not those of Tax Analysts. Founded in 1970, Tax Analysts is a nonprofit provider of tax news and analysis for the global tax community. By working for the transparency of tax rules, and by fostering informed debate over tax policy, Tax Analysts seeks to encourage the creation of tax systems that are fair, simple, and economically efficient.

Second, this tradition of voluntary tax disclosure is inherently fragile. By its nature, a voluntary tradition lacks standards and procedures. As a result, it tends to vary and change – and perhaps to weaken – over time. The public release of an individual tax return involves a real sacrifice of personal and financial privacy, and not surprisingly, some political leaders – especially party nominees – have resisted or dragged their feet. Until 2016, all have eventually chosen to comply. But absent clear, binding, bright-line requirements, the nature of that compliance has varied considerably, both in terms of scope and timing. That variability has underscored the vulnerability of the tradition itself.

Indeed, in light of recent events, it seems possible that the disclosure tradition may have come to an end.

A Tradition of Voluntary Disclosure

The public disclosure of private tax returns is not legally required of anyone and hasn't been since the 19th century.[2] Nevertheless, between 1974 and 2012, every president, vice president, and major party nominee has agreed to disclose substantial information about their personal taxes, typically in the form of a complete individual return. That string of disclosures, however, came to an end in 2016 when Donald Trump declined to release any tax information, either as a candidate or as a sitting president.

Origins of the Tradition

Rarely does the hand of history weigh as heavily on current politics as it does around tax return disclosure. Over the past four decades, politicians have chosen to release their returns because President Richard Nixon chose to release his – under duress.

"Make sure you pay your taxes," Nixon told journalist David Frost during one of their famous interviews. "Otherwise you can get in a lot of trouble."[3] Nixon had reason to know. Even before he was forced from office for his role in the Watergate break-in, Nixon had tax problems – problems serious enough to prompt talk of resignation.[4]

Nixon's tax troubles came to light in an unrelated lawsuit that happened to mention a deduction he had taken for the donation of his official vice-presidential papers to the National Archives (at the time, the value of such donations was deductible). That revelation, uncovered by a sharp-eyed newspaper reporter, gave rise to months of speculation about Nixon's tax behavior. Eventually, a source within the IRS leaked key details from Nixon's recent tax returns to a reporter, and the president soon found himself in the midst of a full-blown political crisis.

Nixon's tax scandal actually prompted one of his most famous public statements, generally

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[2] For a brief period following passage of the Revenue Act of 1924, certain key pieces of personal tax information, including taxes paid, were publicly released and even published in major newspapers. The law was repealed two years later. On the history of tax publicity, see: Marjorie E. Kornhauser, "Shaping Public Opinion and the Law: How a 'Common Man' Campaign Ended a Rich Man's Law," *Law and Contemporary Problems*, March 1, 2009, available at https://ssrn.com/abstract=880383.
[3] David Frost, *Frost/Nixon* (New York: HarperCollins, 2014), 14.
[4] This discussion of Nixon's tax troubles is drawn from my longer treatment: Joseph J. Thorndike, "JCT Investigation of Nixon's Tax Returns," *Tax Notes*, June 13, 2016, 1527-1536.

thought to refer to Watergate. "People have got to know whether or not their President is a crook," he told reporters in November 1973. "Well, I am not a crook."[5]

This claim to innocence, which came at the end of a detailed discussion of Nixon's personal finances, did little to quell the brewing tax scandal. Three weeks later, the president took a further, extraordinary step, releasing four years of personal tax returns to reporters and inviting the Joint Committee on Internal Revenue Taxation (JCIRT) to examine them.[6]

Presidents after Nixon

Nixon's successor, Gerald Ford, did not chose to release his tax returns publicly, but when running for election in his own right in 1976, he did disclose 10 years of summary data (including such items as gross income, taxable income, major deductions, and taxes paid).[7] Beginning with Jimmy Carter, every president through Barack Obama has opted to release a complete tax return during each year in which they have held office, typically on or shortly after the regular filing deadline in April.[8]

It's important to note that presidents from Carter onward have only made annual releases *while in office.* Consequently, the first return released by a sitting president has covered the last year *before* his inauguration. Similarly, former presidents have not typically released returns covering their final year in office, since the filing date for that return has fallen after the end of their term.[9]

Vice Presidents

Every sitting vice president since Walter Mondale has released a tax return during each year in which he has held office, with the exception of George H.W. Bush. Bush released no returns during his first three years as vice president but later disclosed those returns during his 1984 reelection campaign.[10]

As with presidents, the returns released by sitting vice presidents have typically covered the last year before they assumed office and the first three years of their actual term; returns covering their last year in office (filed after the end of their term) have not been released except when part of a subsequent campaign for the presidency.

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[5] William D Samson, "President Nixon's Troublesome Tax Returns," *Tax Notes*, April 11, 2005.

[6] The JCIRT is now known as the Joint Committee on Taxation.

[7] Ford made his initial release of tax information, covering years from 1966 to 1974, on December 31, 1975. See "Income and Tax Information for the President and Mrs. Ford," President Ford '76 Fact Book, Sept. 8, 1976, available from the Gerald R. Ford Presidential Library & Museum, https://www.fordlibrarymuseum.gov/library/document/factbook/taxes.htm. Ford followed up with a second, campaign year release of his 1975 information; see James M. Naughton, "Ford Paid $94,568 in '75 Taxes; Prods Rivals for Similar Detail," *The New York Times*, April 21, 1976.

[8] On a few occasions, presidents have received extensions and made their releases later in the calendar year.

[9] The only exception to this pattern, as far as I know, concerns President Clinton's 2000 tax return, which was released as part of his spouse's 2008 campaign for the presidency.

[10] Bush refused to release his tax returns during Ronald Reagan's first term, arguing that the terms of the blind trust he had established after the 1980 election precluded him from releasing or even seeing his own tax returns. Eventually, however, Bush amended the terms of his trust and released his returns for 1981, 1982, and 1983 while running for reelection as vice president in 1984; see Juan Williams, "Bush Paid 37 Percent in U.S. Taxes," *The Washington Post*, October 4, 1984.

Major Party Nominees

The tradition of voluntary tax disclosure by presidential and vice-presidential candidates is nearly as robust as the one for presidents and vice presidents, but it varies considerably in the details. In particular, there is no standard, informal or otherwise, for the number of returns typically made available.

For the sake of practicality, I will confine most of my comments about candidate returns to those filed and released by Democratic and Republican party nominees for president. Return disclosure by primary candidates varies even more widely than disclosure by nominees, especially since many primary candidates abandon the race in relatively early stages.

The earliest candidate release of which I am aware came in 1952 when Adlai Stevenson, the Democratic nominee, released 10 years of returns; his running mate, Alabama Sen. John Sparkman, made a similar release.[11] In 1968, GOP candidate George Romney also made a substantial release, allowing reporters to examine 12 years of tax returns.[12]

Tax releases by presidential candidates, however, did not begin to become routine until 1976, when Jimmy Carter released a single return during his campaign; as noted earlier, his GOP opponent, President Gerald Ford, chose to release summary tax information covering 10 years but not his actual returns.

Beginning with the 1980 election and continuing through 2012, every major party nominee has released at least one complete tax return and sometimes many more. They have ranged in number from the single returns released by Carter and Ronald Reagan (in 1976 and 1980, respectively) to the 30 returns that Sen. Robert Dole disclosed in 1996.

The table below provides a provisional estimate for the number of returns available for each nominee since 1976. Since some of these returns, especially those released by defeated candidates, are impossible to locate at this point, totals are based partially on news coverage of the releases. In addition, totals for some candidates (such as Hilary Clinton, Al Gore, George H.W. Bush and others) represent not just returns released during the campaign, but also returns released in previous campaigns and while holding public office.

These estimates diverge, in some particulars, from those of other investigators, including the Congressional Research Service.[13] Differences can be explained chiefly as a result of differing research and interpretive methodologies, but they also underscore the *ad hoc* nature of past return disclosures: Absent regularized procedures and centralized archival collection, it may be impossible to provide a definitive count of past disclosures.

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[11] Joseph J. Thorndike, "News Analysis: What Would Nixon Do? Tricky Dick's Lessons on Tax Disclosure," *Tax Notes*, July 16, 2012, 234-236.

[12] Joseph J. Thorndike, "News Analysis: Forget Buffett -- What About a Romney Rule?" *Tax Notes*, Jan. 16, 2012, 271-273.

[13] Julie Jennings, "Memorandum: Federal Tax Returns Disclosed by Selected Nominees for President and Vice President Since 1916," Congressional Research Service, January 30, 2019 (included as Appendix A in Joint Committee on Taxation, "Background Regarding the Confidentiality and Disclosure of Federal Tax Returns," February 4, 2019.

Tax Returns Disclosed by Major Party Nominees, 1976-2016		
1976	1 Jimmy Carter	0 (summary data) Gerald Ford
1980	5 Jimmy Carter	1 Ronald Reagan
1984	11 Walter Mondale	5 Ronald Reagan
1988	5 Michael Dukakis	14 George H.W. Bush
1992	12 Bill Clinton	18 George H.W. Bush
1996	19 Bill Clinton	30 Robert Dole
2000	8 Al Gore	9 George W. Bush
2004	20 John Kerry	13 George W. Bush
2008	7 Barack Obama	2 John McCain
2012	11 Barack Obama	2 Mitt Romney
2016	24 Hillary Clinton	0 Donald Trump

Sources: Contemporaneous media coverage; Julie Jennings, "Memorandum: Federal Tax Returns Disclosed by Selected Nominees for President and Vice President Since 1916," Congressional Research Service, January 30, 2019; Ryan Kelly, "Chart: Presidential Candidates' Tax Returns," *Roll Call*, October 21, 2016, available at https://www.rollcall.com/news/politics/number-tax-returns-each-candidate-released-since-nixon-trump-clinton

The 2016 Election

In 2016, the 36-year, bipartisan tradition of voluntary tax disclosure by major party nominees came to an end when Republican candidate Donald Trump declined to make any sort of tax release. Since tax disclosure figured prominently in both the primary and the general election campaigns, it seems reasonable to focus briefly on what happened.

In 2015 and 2016, Hillary Clinton released a total of 8 years of tax returns; when added to the returns released during her previous campaigns, as well as those released during her husband's presidency, she entered the 2016 election with 24 tax returns in the public record.

By contrast, Clinton's main rival for the Democratic nomination, Sen. Bernie Sanders, initially released just the first two pages of a single return (his Form 1040 for 2014). Much later, he released a complete copy of that same, single return.

Among Republicans competing in 2016, tax disclosure varied widely. On one of the spectrum was Jeb Bush, who set a record for candidate tax disclosure by releasing 33 years of complete returns. At the other extreme, Donald Trump released no tax information whatsoever, either during the primary or the general election campaign.

In the middle were the disclosures made by other GOP candidates. Carly Fiorina released complete tax returns for two years. Sens. Marco Rubio and Ted Cruz, as well as Ohio Governor John Kasich, chose to make available anywhere from four to seven years of tax information, but all of them declined to release full returns. Instead, these candidates disclosed the Form 1040 for each year in question (except for Rubio, who released a series of Form 1040s as well as an IRS tax transcript for 2003).

Presidential Audits

I would like to turn briefly to the subject of presidential audits, which have been much in the news since President Trump has insisted that he cannot or will not release any of his returns while they (or related returns) are under audit by the IRS.

It is impossible to know with any certainty, given privacy restrictions on IRS historical records, but my own research suggests that income tax returns filed by American presidents have probably always gotten a careful look from the agency. Over the decades, the IRS has given special attention to returns filed by prominent elected and appointed officials.

In 1977, however, the IRS established new procedures formally requiring an annual audit for both the president and vice president while in office. According to IRS officials at the time, the new policy was established "in the interest of sound administration" and in light of "everything that has happened in the past."[14]

The "past" in question was almost certainly Nixon's. And notably, Nixon's returns had been audited by the IRS – twice. The second audit, conducted in concert with the JCIRT examination, found numerous problems with Nixon's tax returns. But the initial audit of his 1971 and 1972 returns had concluded with a slightly obsequious note from one IRS district director to the president. "Our examination of your income tax returns for the year 1971 and 1972 reveal that they are correct, he wrote in June 1973. "Accordingly, these returns are accepted as filed. I want to compliment you on the care shown in the preparation of the returns."[15]

Nevertheless, a mandatory audit, even if imperfect, was presumably better than the possibility of no audit whatsoever. Under the new IRS policy established in 1977, no IRS employee would be required to make the affirmative decision to audit the president; it would be routine.

When first announced, the provision for a mandatory audit was publicly welcomed by Carter's White House press secretary, Jody Powell, who said it would help "to allay any concerns in the public about the president's payment of taxes." Those comments came barely a week after Powell had announced that Carter's 1975 return was under audit. That audit – which was already underway in late 1976, even before Carter's inauguration and possibly before his election – was apparently unrelated to the new IRS policy.

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[14] Bill Curry, "Yearly Audits Set for Carter, Mondale," *The Washington Post*, June 21, 1977; "President, Vice President to Have Annual Tax Audits," *The Los Angeles Times*, June 21, 1977.
[15] Staff of H. Comm. on the Judiciary, "Impeachment Inquiry: Hearings Before the Committee on the Judiciary, House of Representatives, 93d Congress, second session, pursuant to H. Res. 803," at 1490 (1975).

The IRS rule requiring routine presidential and vice-presidential audits has been modified several times over the ensuing decades, but it remains a part of the Internal Revenue Manual even today.

Uncertainties of the Tradition

While presidents, vice president, and major party nominees have generally observed the disclosure tradition, there have been occasional issues, for lack of a better word. Many have resulted from the informality of the tradition itself, which – like many traditions – lacks clear standards and procedures. For instance:

1. After taking office in 1974, President Ford did not release any returns while serving the remainder of Nixon's second term. Instead, he waited until he was running for election in his own right, at which point he chose to release only summary tax information.
2. As a candidate, Ronald Reagan was notably reluctant, first in 1976 and later in 1980, to make any sort of comprehensive tax disclosure. Eventually, he released a single return in August 1980 after securing the GOP nomination. (As president, Reagan continued Carter's practice of making annual disclosures.)[16]
3. While serving as vice president during Reagan's first term, George H.W. Bush initially declined to release any tax returns, arguing that the terms of his blind trust (established after his election in 1980) precluded him from seeing or releasing his tax returns. Eventually, Bush reversed himself and released these returns while running for reelection in 1984.
4. The Democratic nominee for vice president in 1984, Geraldine Ferraro, was beleaguered by complaints that her husband, John A. Zaccaro, had refused to release his individual returns, filed separately from those of his wife. Eventually, Zaccaro agreed to release his personal returns but declined to disclose related partnership returns and returns for his real estate business.
5. Several times during his presidency, George W. Bush and his vice president, Richard Cheney, initially released only portions of their annual tax returns, omitting certain forms and statements. More complete versions of these returns, however, were released to certain news organizations upon request.[17]
6. In 2004, Senator and Democratic presidential nominee John Kerry faced criticism over his wife's initial refusal to release her tax returns (filed separately). Eventually, Teresa Heinz Kerry agreed to release her Form 1040, but not the complete return, for 2003.
7. In 2012, Republican candidate Mitt Romney was notably reluctant to release tax information. He disclosed his 2010 return during the primary campaign but dragged his feet about releasing his 2011 return. Eventually, under substantial pressure, he released that return, too, in September 2012.

Not all of these episodes were especially high profile, but several made headlines, and a few – including the Ferraro and Romney episodes – became significant political issues.

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[16] Joseph J. Thorndike, "Reagan Wanted His Taxes Private -- Just Like Trump," *Forbes.com*, May 26, 2016.

[17] See, for example: Johnston, David Cay, "The Bushes Report Income but Only Part of the Returns," *The New York Times*, April 12, 2003. 1; David Cay Johnston, "Tax Cuts Helped President but Far Less so the Cheneys," *The New York Times*, April 14, 2004, 1.

State of the Tradition in 2019

The four-decade tradition of return disclosure by presidents, vice presidents, and the candidates seeking to replace them is clearly imperiled. Donald Trump's refusal to release any tax information during the 2016 campaign, as well as his continuing refusal to do so while in office, poses the most serious challenge.

But there have been other warning signs, too, especially the partial disclosures made by Senators Rubio and Cruz, as well as Governor Kasich, during the 2016 GOP primary race.

The Form 1040 does include important information, some of which may be relevant to a candidate's run for office. For instance, many candidates seem especially concerned about their effective tax rate, and the Form 1040 can shed light on that information. But the Form 1040, viewed in isolation, does not include much of the information that transparency advocates are seeking from tax disclosures, including business income and expenses.

Not every tax return, even when complete, will answer every question. But a complete return can tell us a lot more than a partial return.

Consider, for instance, if Nixon had released only his Form 1040 in 1973. Such an incomplete disclosure would have made it impossible to ferret out the most serious problems with his tax filings. In particular, it would have been impossible to identify the improper deduction he took for the donation of his vice-presidential papers to the National Archives, as well as his incorrect treatment of capital gains from the sale of his New York City apartment and portions of his estate in San Clemente, California. These were the big-ticket items uncovered by the JCIRT when it examined Nixon's returns, accounting for most of the $476,451 he owed in back taxes and interest.[18]

The "1040 problem" is really just one example of a broader issue: the inherent vagueness and informality of a tradition, as opposed to a legal requirement. Absent clear standards and procedures, a tradition can be interpreted, manipulated and ultimately diminished by anyone reluctant to observe it.

Indeed, the history of the tax disclosure tradition raises as many questions as it answers, such as:

1. Who should release tax returns? Sitting presidents, presumably, as well as vice presidents. And candidates, if past practice is any guide. But which candidates, and at what point in the election cycle? During the primaries? After winning the nomination?
2. How many returns are adequate? During the 2012 controversy over Romney's tax disclosure, there was much debate over whether one return was enough. Meanwhile, extraordinary releases by some candidates, like Jeb Bush, have a tendency to make more limited disclosures look insufficient. Is more always better? Is less never enough?
3. Exactly what constitutes a complete tax disclosure? Is a Form 1040 sufficient?
4. Should candidates be expected to release returns filed by partnerships and other business entities?

[18] See Thorndike, "JCT Investigation of Nixon's Tax Returns," *passim*.

5. What constitutes a "release" of tax information? Must it involve physical or electronic distribution of complete copies? To all interested members of the media? Only a chosen few? What about the general public?
6. What should be done with tax returns once they have been disclosed (assuming that copies are actually distributed)? Returns from presidents and vice presidents tend to end up in presidential libraries, but what about the returns of candidates? Should these be preserved in some fashion? Currently, most candidate returns disappear once that candidate drops out or loses an election.

These are hardly the only questions that need answering, but they are some of the most important.

Conclusion

The tradition of presidential, vice presidential, and candidate tax return disclosure is long and, until recently, quite robust. But ultimately, I believe we would all be better off – candidates, the news media, historians, and the voting public at large– if this informal tradition were transformed into something more substantial, well-defined, and legally binding. The informality of a tradition, when combined with the genuine sacrifice of personal privacy required of tax return disclosers, is an invitation to failure. It is also an invitation to endless begging, pleading, and shaming, none of which is good for the body politic.

As lawmakers consider whether to transform this voluntary tradition into a legal requirement, they may wish to also consider the inherent fragility – and the ultimate durability – of even the most well-established political traditions. No tradition in American politics, after all, was more hallowed or universally revered than the two-term limit on presidential terms.[19] Until it wasn't.

Which is probably why Americans made it a law.

[19] Often attributed to George Washington, the two-term tradition is probably better ascribed to Thomas Jefferson. See Michael Korzi, *Presidential Term Limits in American History: Power, Principles, and Politics*, Texas A&M University Press (2013), ch. 3.

Chairman LEWIS. And now we will hear from a distinguished professor of law, Professor Yin, from the University of Virginia.

STATEMENT OF GEORGE K. YIN, EDWIN S. COHEN DISTINGUISHED PROFESSOR OF LAW AND TAXATION, UNIVERSITY OF VIRGINIA SCHOOL OF LAW

Mr. YIN. Thank you, Mr. Chairman, Ranking Member Kelly, other Members of the Subcommittee and Committee. I am a law professor at the University of Virginia and a former chief of staff of the Joint Committee on Taxation. My testimony concerns the existing authority of the Committee to obtain and disclose the tax return information of any taxpayer, including the President, vice president, and any business that they own. I have three points to make.

First, the chairman of the Committee may request the tax return information of any taxpayer from the Treasury Secretary, who is obligated to furnish it. I don't see any wiggle room in this statute for the Secretary to refuse a request. I believe Congress drafted the authority without conditions, to match the unrestricted right of the President at the time to access and disclose any tax return.

Should the Secretary refuse, we would be in unchartered territory. The authority appears to have been rarely invoked since its creation in 1924, and I know of no instance when a request has been refused. If a court were to become involved, it might look to precedents involving congressional enforcement of a subpoena. Those cases generally indicate that Congress must act with a legitimate purpose, meaning, generally, a purpose consistent with its constitutional responsibilities. The chairman, therefore, would be well advised to request tax return information only if he has a legitimate purpose.

Secondly, if it has a legitimate purpose, the Committee may submit any tax return information to the House. The present statute places no condition on this authority. But as originally passed in 1924, the Committee could submit only, "relevant or useful," information to the House, words that were removed by technical amendment in 1976.

In recent research, I examined the meaning of these words very closely and concluded that they require the Committee to have, at a minimum, a legitimate purpose for submitting tax return information to the House. I also concluded that the meaning did not change even after the removal of the words in 1976. I believe the amendment in 1976 was a mere technical drafting change with no substantive effect.

In short, the Committee must have a legitimate purpose to submit tax return information to the House. Since the submission might result in public disclosure, the Committee should act only if it has a legitimate purpose to disclose the tax information to the public.

Finally, since 1976, the tax committee authority to obtain and submit tax return information is the sole means by which Congress can make public disclosures of such information. The authority, therefore, should be interpreted in a manner that does not frustrate Congress' informing function with respect to such information.

I provide an example in my testimony of why the legitimate purpose for tax committees to act should not be limited only to purposes within the specific legislative jurisdiction of the Committee. Rather, a permissible purpose should include any responsibility given to Congress under the Constitution.

Congress, in effect, placed tax return information in a locked safe in 1976, but it preserved one key for purposes of disclosing the information to the public. It gave that key to the tax committees. The law, therefore, should be interpreted to enable the tax committees to use that key in appropriate and necessary circumstances.

Thank you very much.

Chairman LEWIS. Thank you very much, Professor Yin, for your testimony.

[The prepared statement of Mr. Yin follows:]

Testimony of George K. Yin*
Hearing Before the Oversight Subcommittee of the
House Committee on Ways and Means
on Legislative Proposals and Tax Law Related to Presidential
and Vice-Presidential Tax Returns
116th Cong., 1st Sess.
February 7, 2019

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to participate in this hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns. Title X of H.R. 1 proposes new rules for the disclosure of tax returns of presidents, vice-presidents, and candidates for those offices. My testimony will focus on the existing authority of the Ways and Means Committee to obtain and disclose the tax returns and return information (collectively, "tax return information") of any taxpayer, including the president, vice-president, and any business that they own.[1] I am happy to answer any questions on the broader issue of tax return privacy and disclosure.

1. The Ways and Means Committee may obtain the tax return information of any taxpayer from the Treasury Department.

Code section 6103(f)(1) authorizes the Ways and Means Committee to obtain the tax return information of any taxpayer (individual or business) from the Treasury Department. The chairman of the committee must forward a written request of the desired information to the Secretary of the Treasury who "shall furnish" it to the committee. If the tax return information can be associated with a specific taxpayer, the committee may receive and examine the information only while sitting in closed executive session unless the taxpayer otherwise consents.

This authority was added in 1924. Previously, the president had the sole right to obtain and disclose the tax returns held by the Bureau of Internal Revenue (BIR) (predecessor to the IRS). Congress decided in 1924 that as a co-equal branch of government, it should have the same authority as the president.

Several matters brought this issue to the attention of Congress. First, Congress had begun an investigation of the BIR and found that it could not carry out its work without having access to tax returns. Second, some in Congress wanted to investigate possible conflicts of interest

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[1] Other congressional tax committees have the identical authority but I will generally reference only the Ways and Means Committee.

involving Andrew Mellon, who as Treasury Secretary continued to own many private business interests. Third, there was concern in Congress that Mellon had improperly accessed and publicly disclosed the tax return information of Senator James Couzens (R.-Mi.) in connection with a feud between the two men. Finally, Congress wanted to examine the tax returns of the alleged principals involved in the Teapot Dome scandal. After initially resisting, President Coolidge provided those returns to Congress (using his authority as president to obtain and disclose anyone's returns). But this experience highlighted for Congress the imbalance in the rights of the two branches to the information.

Section 6103(f) does not place any conditions on the exercise of the authority to obtain tax return information by the Ways and Means Committee. Moreover, it provides no basis for the Treasury Secretary to refuse a request. I believe both features were intentional. Since the president at the time had unconditional access to tax returns, Congress wanted to give its committees the same right.

When the law was passed, Mellon's top deputy at the Treasury wrote to Mellon (who was in Europe) to inform him of the new law. The deputy indicated that he thought it would be very partisan for Congress to use the new law to obtain Mellon's personal tax returns, but "if they demand it we have no recourse."[2] I believe those few words describe the general understanding in 1924 and the years since that there is no basis for the Treasury Secretary to refuse a committee request under this law.

Should the present Treasury Secretary refuse a committee request, we would be in uncharted territory. The authority appears to have been rarely invoked since 1924, and I know of no instance when a request under the authority has been refused. If a refusal resulted in a conflict requiring judicial resolution, a court might look to precedents involving the analogous question of congressional enforcement of a subpoena. Those cases generally indicate that Congress must act with a legitimate purpose to have its subpoenas enforced, meaning generally a purpose consistent with its responsibilities under the Constitution. Therefore, notwithstanding the absence of statutory conditions, the committee would be well advised to request tax return information only if it has a legitimate purpose.

2. If it has a legitimate purpose, the Ways and Means Committee may submit any of the tax return information it obtains to the House.

Code section 6103(f)(4)(A) (second sentence) authorizes the Ways and Means Committee to submit to the House any tax return information that it obtains pursuant to section 6103(f)(1). The statute does not presently place any limitation or condition on the exercise of this authority

[2] Letter from Gerrard B. Winston, Undersecretary of the Treasury, to Andrew Mellon, Secretary of the Treasury, July 28, 1924, in General Records of the Treas. Dept., Central Files, 1917-1932 (Ofc. of Treas. Sec'y) (RG 56, Entry No. A1 191), box #198 (BIR Investigation, 1923-32 file), Nat'l Archives & Records Admin., College Park, Md.

by the committee. As originally enacted in 1924, however, the law authorized the committee to submit only "relevant or useful" information to the House. These two modifiers were stricken from the statute (without any explanation) as one of several hundred "technical amendments" approved by the Senate en bloc at the end of its debate of the bill that would become the Tax Reform Act of 1976 (the "1976 Act"). The bill as amended was agreed to by the House and signed into law, again without any discussion of the change.

There is no discussion in the legislative history of the meaning of the two modifiers, which were added by a House floor amendment in 1924. The plain meaning of the words suggests a very low bar for the committee that leaves it with considerable discretion. On the other hand, House debate in 1924 showed much respect for the privacy rights of taxpayers, a congressional concern dating back to at least 1870. Since submission of tax return information to the House for possible disclosure to the public is more invasive of privacy rights than the mere retrieval of such information by the committee (while sitting in closed executive session), Congress must have intended the submission authority to be subject to at least the same limitation placed on the committee's ability to obtain the information. Hence, I concluded in recent research that the law in 1924 required the committee to have, at a minimum, a legitimate purpose for submitting any information to the House.[3]

I do not believe the striking of the two modifiers in 1976 changed that interpretation. The legislative history of the 1976 Act indicates Congress's general intention to tighten existing disclosure rules, not loosen them, including those applicable to its committees. The only statements in the record on this issue by legislators or witnesses were to restrict the discretion of the tax committees, not increase it. I concluded in my research that the amendment was merely a technical drafting change—consistent with the manner in which it was presented to the Senate—to conform to an identical change made to a provision applicable to non-tax committees. Since non-tax committees under the Senate's bill were barred from making any public disclosures, the words, "relevant or useful," were dropped from the non-tax committee provision as surplusage. I believe the change to the tax committee provision was made to conform to that amendment and was not intended to have any substantive effect.[4]

Hence, following the 1976 Act and continuing today, the Ways and Means Committee may submit tax return information to the House only if it has a legitimate purpose. This authority is separate from the committee's right to obtain the information. Since the submission authority might result in disclosure of the information to the public, the committee should exercise it only if the committee has a legitimate purpose for disclosing the information to the public.[5]

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[3] See George K. Yin, "Preventing Congressional Violations of Taxpayer Privacy," 69 TAX LAWYER 103, 127-29 (2015).
[4] See id. at 132-35.
[5] For a committee submission to the House that, in my view, failed to satisfy the legitimate purpose requirement, see id. at 110-18, 149.

3. The authority of the Ways and Means Committee to obtain and submit tax return information should be interpreted in a manner that does not frustrate Congress's informing function with respect to such information.

Prior to 1976, the president could disclose tax return information to the public. In addition, the tax committees and certain non-tax committees of Congress could each submit tax return information to the House or Senate for possible disclosure to the public. Consistent with Congress's goal of providing stronger protections for the privacy rights of taxpayers, the 1976 Act eliminated the ability of both the president and non-tax committees to make any such disclosures. The president was generally barred from making any disclosure at all, and non-tax committees were permitted to submit tax return information to the House or Senate only when that body is sitting in closed executive session (unless the taxpayer otherwise consents).[6]

No change was made, however, to the authority of the tax committees to submit tax return information to the House or Senate. Although desiring to strengthen taxpayer privacy rights, Congress also wanted to protect its ability to carry out its "informing function"—its responsibility to inform the public about the administration of the law.[7] Just two years earlier, Congress had seen the importance of having this ability when it used its authority under the predecessor to section 6103(f)(4)(A) to release to the public a report of the staff of the Joint Committee on Internal Revenue Taxation[8] containing tax return information of former President Nixon. With the changes made in the 1976 Act, the tax committee authority became the *only* way for Congress to inform the public about matters requiring disclosure of tax return information.

It was natural for Congress to delegate this responsibility to the tax committees. Following Watergate, Congress knew that the president had misused his authority to protect the confidentiality of tax return information.[9] In addition, Congress was aware that certain non-tax committees had also not adequately protected it. Meanwhile, the tax committees had handled the information responsibly and without incident. They also were the most likely to need the information.

Because the tax committee authority is the sole means by which Congress can make public disclosures of tax return information, the authority should be interpreted in a manner that does not frustrate Congress's ability to carry out its informing function with respect to such information. The following example illustrates the type of interpretation required.

Under Code section 6103(f)(3), certain non-tax committees may obtain tax return information from the Secretary of the Treasury. Suppose a non-tax committee obtains such

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[6] See Code section 6103(f)(4)(B) (second sentence) and (g).

[7] Former President Woodrow Wilson asserted that the informing function is even more important than Congress's lawmaking role. See WOODROW WILSON, CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS 303 (1885).

[8] Now the "Joint Committee on Taxation."

[9] One of the Articles of Impeachment against President Nixon involved his use of the tax agency and its tax returns for improper political purposes. See H. Judiciary Comm., Impeachment Article II, H.R. Rep. No. 93-1305, at 3 (1974).

information and Congress determines that its disclosure to the public would further one of the constitutional responsibilities of Congress. Code section 6103(f)(4)(B) (second sentence) permits the non-tax committee to submit the information to the House or Senate but no public disclosure of it is allowed. If the tax committees were unable to obtain the same information because it relates to a matter outside of their legislative jurisdiction, then it would not be possible for Congress to carry out its informing function with respect to the information. In view of its experience with the Nixon report just two years earlier, Congress could not have intended that result in 1976. Hence, the "legitimate purpose" for the tax committees to obtain or submit tax return information should not be limited only to purposes within their specific legislative jurisdiction. Rather, a permissible purpose should include any responsibility given to Congress under the Constitution.

4. Conclusion.

The tax committees have two separate authorities—they may obtain the tax return information of any taxpayer from the Treasury, and may submit any of the information obtained to the House or Senate for possible disclosure to the public. Each action requires the committee to have a legitimate purpose, meaning generally a purpose that furthers a constitutional responsibility of Congress. Since the authority to submit might result in disclosure of the information to the public, the committee should exercise it only if the committee has a legitimate purpose for disclosing the information to the public.

In addition, because the tax committee authority is the sole means by which Congress can make public disclosures of tax return information, the authority should be interpreted in a manner that does not frustrate Congress's informing function with respect to such information. In 1976, Congress in effect placed tax return information in a locked safe but did not throw away all of the keys for purposes of disclosing such information to the public. Rather, it preserved just one key for that purpose and gave it to the tax committees. The law therefore should be interpreted to enable the tax committees to use the key in appropriate and necessary circumstances.

* * *

Thank you very much. I am happy to answer any questions.

Chairman LEWIS. Now, it is my pleasure to present Steven Rosenthal, a senior fellow at the Tax Policy Center.

You may begin, sir.

STATEMENT OF STEVE ROSENTHAL, SENIOR FELLOW, URBAN-BROOKINGS TAX POLICY CENTER

Mr. ROSENTHAL. Chairman Lewis, Ranking Member Kelly, Members of the Subcommittee, and other Members of the Ways and Means Committee, thank you for inviting me to speak today on disclosing Presidential and vice presidential tax returns. My name is Steve Rosenthal. I am a senior fellow at the Tax Policy Center. I am speaking only on my own behalf, and my views should not be attributed to any other organization or person.

I would like to highlight three points for my testimony. First, disclosing tax returns of Presidents, vice presidents, and candidates for these offices is important because it increases public confidence in the government in support for our voluntary tax system. As Ranking Member Kelly observed, our tax system is based on self-assessment. For it to work properly, taxpayers must be confident that it is fair.

In my view, disclosure of tax returns to the public can help. Tax returns reveal effective tax rates, which is the amount of taxes divided by taxable income. Effective tax rates are useful to measure whether a taxpayer makes a fair share payment of taxes. Tax returns also show to the dollar the source and nature of income, losses, and deductions.

Secondly, tax return information and other tax information of Presidents and vice presidents enhances the ability of Congress to oversee the executive branch, which is critical to our checks and balances. Congress may, for example, use tax information to evaluate the fairness of IRS audits, investigate potential financial conflicts, or to develop new tax legislation or other legislation.

Thirdly, there are two paths to obtain tax information on Presidents and vice presidents. As Professor Yin has observed, existing law, section 6103(f) of the Tax Code, permits the Committee on Ways and Means to request tax information on Presidents or vice presidents that is held by the IRS. And new legislation, like H.R. 1, would require Presidents and vice presidents to disclose a minimum number of years of tax returns. Both paths are important, in my view.

The existing Tax Code permits the Committee to request tax returns and other information held by the IRS. The scope of the Committee's request would be based on its purpose for the tax information. Some information, such as IRS audit work papers, would help the Committee evaluate the fairness of an IRS audit. Other information, such as related business and trust returns, would help identify potential financial conflicts. After reviewing the information, the Committee could exercise its discretion to determine whether and how to release it.

Now, new legislation such as H.R. 1 can require Presidents and vice presidents to disclose publicly a minimum number of years of tax returns, but Congress cannot anticipate all of the information to require in the future. It may not foresee how a future President will make his or her income or what potential conflicts may arise.

But Congress could still use section 6103(f) to obtain extra years of returns or wider information on a President or vice president, if appropriate.

In summary, the public would benefit from the disclosure of tax returns of Presidents and vice presidents and candidates for these offices. Congress would help fulfill its oversight responsibilities by obtaining tax information, and of presidents and vice presidents as appropriate. And there are two paths to obtain the tax information: One in existing law and one in proposed legislation. And in my view, both are important.

I am happy to take any questions. Thank you.

Chairman LEWIS. Thank you for your testimony.

[The prepared statement of Mr. Rosenthal follows:]

THE VALUE OF PRESIDENTIAL AND VICE-PRESIDENTIAL TAX RETURNS TO THE PUBLIC AND CONGRESS

Steven M. Rosenthal*
Senior Fellow
Urban-Brookings Tax Policy Center

before the
Committee on Ways and Means, Subcommittee on Oversight
United States House of Representatives
Hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns

February 7, 2019

*The views expressed are my own and should not be attributed to the Urban Institute, the Brookings Institution, the Tax Policy Center, their trustees, or their funders.

Chairman Lewis, Ranking Member Kelly, distinguished Members of the Subcommittee, and other Members of the Ways and Means Committee:

Thank you for inviting me to share my views on the need for presidents, vice presidents, and candidates for these offices to disclose their tax returns. The views expressed here are my own, and should not be attributed to any organization I am affiliated with, their trustees, or their funders. In this testimony, I discuss (i) the importance of publicly disclosing the tax returns of current and potential presidents and vice presidents; (ii) the need for new legislation, such as H.R. 1, to ensure presidents, vice presidents, and candidates for these offices cannot avoid this valuable service; and (iii) the existing authority of the Committee on Ways and Means (the "Committee") to request tax information from the Internal Revenue Service (the "IRS")—authority that is critical to our legislative checks and balances, whether or not new legislation is enacted.

Publicly disclosed tax returns would reveal valuable information on effective tax rates, the sources and nature of income and deductions, and potential conflicts of interest, which is particularly important for presidents, vice presidents, and candidates for these offices. That is why I believe Congress should enact legislation, such as H.R. 1, that requires presidents, vice presidents, and major party candidates for these offices to disclose their tax returns (and associated schedules and information returns).

But, in some circumstances, Congress may need more detailed information on a president or vice president. New legislation cannot foresee how a future president or vice president will make their income—or what potential conflicts may arise. So, it cannot predict in advance all information to require: A one-size-fits-all approach will not work.

Fortunately, this Committee is already authorized to request, confidentially, additional tax information on a sitting president or vice president under sec. 6103(f) of the Internal Revenue Code (the "Code"). It can ask for tax information on the president or vice president—and on entities in which they hold financial interests, either directly or indirectly. The Committee also can ask for any IRS audit work papers, if that information is relevant.

A 6103(f) request by the Committee gives Congress flexibility to deal with officeholders' tax information case by case. In my view, such a request is appropriate and critical when a president or a vice president (1) refuses to release his or her tax returns, (2) acknowledges many years of open audits by the IRS, and (3) refuses to divest financial interests in a sprawling business empire—or to transfer the interests to a blind trust. In these circumstances, the Committee should seek tax returns and other tax information on the president or vice president to fulfill its oversight and other legislative responsibilities. It could decide, after its review of any 6103(f) tax information, whether and how to disclose that information publicly.

THE PUBLIC SHOULD SEE THE TAX RETURNS OF PRESIDENTS, VICE PRESIDENTS, AND CANDIDATES FOR THESE OFFICES

In 1978, in the aftermath of Watergate, Congress required the president, the vice president, and candidates for these offices to disclose financial information.[1] This includes, within broad ranges, information about income, assets, and liabilities. Congress enacted these financial disclosure provisions to monitor and deter possible conflicts of interest.[2] But Congress did not require presidents, vice presidents, or candidates for these offices to disclose their tax returns. That step may have been considered unnecessary because, a few years earlier, President Nixon had voluntarily released his returns after allegations that he had avoided paying his taxes.[3]

I expect the public disclosure of tax returns, like the disclosure of financial reports, would help the public and Congress monitor and deter conflicts of interest. A solid majority of the public now would like to see President Trump's tax returns, presumably to learn more about his business dealings and financial background.[4]

But disclosure of a president's or vice president's tax returns offers more to the public than a check on his or her business dealings. Our income tax system is based on self-assessment. We rely on taxpayers to calculate, declare, and pay their taxes before any assessment by the authorities.

As a general matter, a citizen will comply with government mandates (including taxpaying) "if she perceives government as trustworthy and she is satisfied other citizens are also engaging in ethical reciprocity."[5] Ethical reciprocity means that other citizens are complying with their portion of the responsibility—that is, are also paying their taxes.

Disclosure of a president's and vice president's tax returns—and the impression that others, especially public servants, are complying with their tax obligations—would bolster the public's faith in our tax system.[6] It could demonstrate that,

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[1] Title I of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app. 4 §§ 101-111.

[2] "Policies Underlying Disclosure," US House of Representatives Committee on Ethics, https://ethics.house.gov/financial-dislosure/policies-underlying-disclosure. The legislative history in the Senate listed five rationales for public finance disclosure: (1) increase public confidence in the government, (2) demonstrate the high level of integrity of the vast majority of government officials, (3) deter conflicts of interest from arising, (4) deter some persons who should not be entering public service from doing so, and (5) better enable the public to judge the performance of public officials (Sen. Rep. No. 95-170, p. 21).

[3] The IRS had acquiesced: Baltimore district director William D. Walters wrote President Nixon that the IRS examination of his returns for 1971 and 1972 revealed they were correct. He added: "Accordingly, these returns are accepted as filed. I want to compliment you on the care shown in the preparation of the returns." Joseph J. Thorndike, *JCT Investigation of Nixon's Tax Returns* (Falls Church, VA: Tax Analysts, 2016), https://uschs.org/wp-content/uploads/2016/02/USCHS-History-Role-Joint-Committee-Taxation-Thorndike.pdf. The Joint Committee on Taxation later found that Nixon owed the government $476,431 in unpaid taxes and accrued interest.

[4] Joshua Gillin, "Trump Wrong That Americans Don't Care about His Tax Returns," Politifact, January 11, 2017, (describing several polls that showed large majorities of the public would like to see Trump's tax returns); https://www.politifact.com/truth-o-meter/statements/2017/jan/11/donald-trump/trump-wrong-reporters-are-only-ones-who-care-about/. The latest polling shows 6 in 10 Americans think Congress should obtain and release Trump's tax returns. ABC News/Washington Post poll, January 21–24, 2019, available at https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2019/01/27/National-Politics/Polling/release_540.xml?uuid=a7vIaCHwEemnWSuFQbu-IA.

[5] Margaret Levi, *Consent, Dissent, and Patriotism* (New York: Cambridge University Press, 1997), p. 19.

[6] Of course, if an officeholder's tax returns demonstrated tax evasion, tax morale might be diminished. But the potential disclosure of tax returns might deter those people who evade their tax responsibilities from entering public service or running for office.

contrary to the words of the late Leona Helmsley (owner of a New York real estate fortune), taxes are not just for the "little people."[7]

Our experience with President Nixon also demonstrated that failure to disclose a president's tax returns could damage confidence:

> "The president can reduce his own taxes by fraudulent means and put pressure on the IRS, which may lack the will to properly audit the president. Confidentiality of tax returns enabled the conflict of interest to develop into abuse....[T]he public's faith in the tax system and in the government was shattered."[8]

Tax returns of major-party candidates for president and vice president also can help voters make informed choices. They could reveal whether, for example, a candidate would benefit from his or her tax proposals. They could anticipate potential conflicts that would arise after the candidate takes office or from being head of an executive branch that includes the IRS. Disclosing the president's and vice president's tax returns only after they are inaugurated may be too late.

CONGRESS SHOULD REQUIRE PRESIDENTS AND VICE PRESIDENTS, AND CANDIDATES FOR THESE OFFICES, TO DISCLOSE THEIR TAX RETURNS PUBLICLY

After President Nixon's disclosures, President Carter, and every subsequent president until President Trump, voluntarily disclosed his returns to the public.[9] What's more, every major party nominee for president and vice president until candidate Trump voluntarily disclosed their returns. Also, after its Nixon experience, the IRS automatically audits the returns of the president and vice president, and presumably that includes President Trump and Vice President Pence.[10] But a norm is not enough: legislation is needed to require public disclosure of tax returns.

Congress should now enact legislation to *require disclosure of tax returns* for the president and vice president and candidates for these offices. Congress could set uniform requirements in the new legislation, including the number of years of tax returns to disclose and the scope of information required. (In addition, Congress might consider formalizing the IRS's audit of the president's and vice president's returns.)

H.R. 1, for example, requires the disclosure of 10 years of tax returns, including the associated schedules and information returns. Ten years is a little long, as many taxpayers only keep three or six years of returns.[11] More critically, H.R. 1 seeks only personal returns and the associated schedules and information returns. Because the legislation does not seek business returns of related entities, it might miss important information. Congress should weigh the value of

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[7] John J. Goldman, "Leona Helmsley Sentenced to 4 Years in Prison: Taxes," *Los Angeles Times,* March 19, 1993, http://articles.latimes.com/1992-03-19/news/mn-5943_1_leona-helmsley-sentenced.

[8] William D. Samson, "President Nixon's Troublesome Tax Returns," *Tax Notes,* April 11, 2005, http://www.taxhistory.org/thp/readings.nsf/ArtWeb/F8723E3606CD79EC85256FF6006F82C3?OpenDocument.

[9] President Gerald Ford opted to release a summary of his returns rather the returns themselves. See "Presidential Tax Returns," Tax Analysts, http://www.taxhistory.org/www/website.nsf/Web/PresidentialTaxReturns?OpenDocument.

[10] Internal Revenue Manual § 4.2.1.11, "Processing Returns and Accounts of the President and Vice President," https://www.irs.gov/irm/part4/irm_04-002-001#d0e1091.

[11] Taxpayers can obtain their tax returns from the IRS for seven years from filing if requested with Form 4506. The statute of limitations generally is three years, or six years if a taxpayer omits a substantial amount of income. Sec. 6501(a) and (e) of the Code.

expanding H.R. 1 to require tax returns of related entities, such as those directly or indirectly managed or controlled by the officeholder or candidate, against exposing the tax information of people other than the officeholder or candidate and possibly infringing on other people's privacy.[12]

True, public disclosure of tax returns of presidents, vice presidents, and candidates for these offices will infringe on their personal and commercial privacy interests (beyond the existing disclosure of financial information). But the president and the vice president oversee the entire executive branch, and the execution of their duties affects all of us. Moreover, they choose to seek these offices—and to serve. In my view, the public's interest in disclosure far outweighs the additional privacy concerns of a president, or a vice president, or a candidate for these highest offices in our country.

What the Public Learns from Tax Returns

The public would glean substantial information from tax returns that is not available in financial disclosures. For example, tax returns show both income and losses.[13] Tax returns reveal precise taxable income and the amount of taxes paid, which determines the officeholder's or candidate's effective tax rate. Effective tax rates are useful to measure whether a taxpayer pays a "fair share" of taxes.

Is the officeholder's or candidate's effective tax rate lower than the average American's? Is the low tax rate attributable to legal tax avoidance, or illegal tax evasion, or something in between? Any tax shelters? Any amended returns, perhaps as part of an amnesty program, like the one for unreported foreign accounts?

The public would also learn the sources and nature of income and deductions. How much salaries or wages? Any consulting income? How much business income? Investment income? Foreign-source income and foreign taxes? Any charitable contributions? Any state taxes?[14]

Tax filings might reveal foreign financial relationships. In recent years, Congress has required taxpayers to disclose detailed information on foreign assets and foreign accounts. The public could see whether a box for a foreign financial account was checked on Form 1040, Schedule B, which requires filing the FinCEN Form 114 (aka FBAR, foreign bank account report). The public could also see whether a Form 8938 was filed for foreign financial assets.

Of course, tax returns may not answer all potential questions. For example, the identity of a lender is not typically reported on either personal or business tax returns. But any tax return information released publicly might complement information from other sources—financial disclosures, corporate filings, court filings, and so on—and could give a fuller picture.

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[12] Congress also might require presidents, vice presidents, and candidates to disclose their state income tax returns, to accomplish similar policy goals. But Congress should first consider whether this would strike the right balance in federal and state oversight responsibilities.

[13] Financial disclosures show only income.

[14] President Nixon initially did not pay state income taxes to California or Washington, DC; he was a citizen without a state. Samson, "President Nixon's Troublesome Tax Returns," p. 6.

In addition, some presidents, vice presidents, or candidates have complicated financial arrangements. But plenty of experts could help unravel the returns and explain the issues they raise.[15]

THE WAYS AND MEANS COMMITTEE COULD, UNDER EXISTING LAW, REQUEST PRESIDENTIAL AND VICE-PRESIDENTIAL RETURNS

Our Constitution authorizes Congress to enact legislation and oversee whether the legislation is faithfully executed, a critical part of our checks and balances.[16] Regardless of whether new legislation is enacted, existing authority permits the Committee to request tax returns and other tax information. That authority is important to retain because new legislation cannot anticipate all future circumstances.

In 1924, Congress enacted a road map for tax returns, sec. 6103(f) of the Code, in response to two controversies: (1) the Teapot Dome scandal, where senior officials in the Harding Administration granted public oil field leases in exchange for bribes; and (2) allegations stemming from Treasury Secretary Andrew Mellon's retention of business interests while serving in government. Some believed the Bureau of Internal Revenue, the precursor to the IRS, showed favoritism to the secretary and his businesses.[17]

Similar questions and concerns are swirling today. President Trump maintains a sprawling business empire that he has not transferred to a blind trust.[18] Also, according to President Trump, his returns are open for audit by the IRS and have been "for many years."[19] Without seeing these returns, the Committee cannot tell whether the returns are being properly reviewed.[20] The Committee also cannot understand how any disputes have been resolved, which is essential to overseeing the fair administration of our tax system.

Sec. 6103(f) provides, upon written request of the Chairman of the Committee, the Treasury Secretary "***shall*** furnish such committee with ***any*** return or return information specified in such request" (emphasis added). Returns and return information are defined expansively in Code sec. 6103(b)(1) and (2). The Chairman may follow up with additional requests, based on the information received.

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[15] As noted earlier, the Joint Committee on Taxation investigated and reported on President Nixon's tax returns, and nongovernment experts helped the investigation (Thorndike, *JCT Investigation).*

[16] Todd Garvey, *Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure* (Washington, DC: Congressional Research Service, 2017), available at https://fas.org/sgp/crs/misc/RL34097.pdf.

[17] George K. Yin, "Preventing Congressional Violations of Taxpayer Privacy," *Tax Lawyer* 69, no. 103 (2015), available at https://ssrn.com/abstract=2628193.

[18] President Trump created a revocable trust, not a blind trust. Susanne Craig and Eric Lipton, "Trust Records Show Trump Is Still Closely Tied to His Empire," *New York Times,* February 3, 2017, https://www.nytimes.com/2017/02/03/us/politics/donald-trump-business.html.

[19] Brett Samuels, "Trump Says He Will Refuse to Release Tax Returns as Long as They Are Under Audit," *The Hill,* November 7, 2018, https://thehill.com/homenews/administration/415526-trump-says-he-will-refuse-to-release-tax-returns-as-long-as-they-are.

[20] The Committee, at a minimum, should seek the returns of the entities that President Trump listed in his financial disclosures. Trump's lawyers acknowledged that his personal federal income tax returns reflected both the income earned by more than 500 separate entities and the interest paid or received by these entities. Matthew Yglesias, "Here's the 'Certified' Letter Saying Trump Has No Russian Debts or Investors," Vox, May 12, 2017, https://www.vox.com/2017/5/12/15630378/trump-russia-letter.

The Secretary may not redact any of the information requested. However, the Secretary must furnish any information associated with a particular taxpayer to the Committee in a closed executive session. After receiving the information, the Committee may designate or appoint examiners or agents to inspect the information "at such time and in such matter" as the Chairman determines. The Committee, in its discretion, may later share part of or all the tax information, or a report based on the information, with the full House.

What the Committee Learns from Tax Returns and Other Return Information

President Trump's business arrangements are complex. As now IRS Commissioner Charles Rettig explained during the last presidential campaign, "To fully understand the financial status of Trump, one would likely need to see returns for multiple years, the work-papers for the individual returns and the return for numerous related entities," which Mr. Rettig predicted would be unlikely to happen.[21]

The tax code is crystal clear that the Committee is authorized to request the above tax information, and more, from the Secretary (who "shall" provide it). Congress should tailor its request based on its purpose for the returns, and many purposes are legitimate and derive from Congress' express and implied powers under our Constitution.[22] For convenience, I place some of these purposes into three groups:

Overseeing the IRS: The Committee could investigate whether the IRS is properly auditing the president, and entities related to him, and whether the IRS is resolving these audits fairly. The Committee would need a wide scope of tax information from returns audited or open for audit during his time in office (or six years from filing, whichever is longer).[23] The Committee would need both personal and business returns and, perhaps, trust (including his revocable business trust) and foundation returns associated with the president. It could seek any associated schedules and taxpayer work papers in the possession of the IRS. The Committee also could request IRS work papers, notices of deficiencies, closing agreements, and so on to evaluate the fairness of the audits.

Requesting the information would not suggest that the Committee lacks confidence in the professionals at the IRS who audit the returns of the president and vice president. It would simply reflect the reality that the IRS is part of the executive branch, which is headed by the president, and that Congress should ensure the executive branch is faithfully executing the law.

Investigating conflicts: Congress must know whether the president and executive branch are acting solely in the national interest—or are influenced by personal interest. The president and executive branch recommend policies to Congress and wield tremendous power over policy through executive actions. Did the president benefit from last year's tax

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[21] Charles Rettig, "No Ordinary Audit: Donald Trump Is Facing the IRS 'Wealth Squad'," *Forbes*, February 28, 2016, https://www.forbes.com/sites/irswatch/2016/02/28/no-ordinary-audit-donald-trump-is-facing-the-irs-wealth-squad/#3460b2804d71.

[22] The Chairman need not spell out the purposes in the request for the Secretary. He could simply state that the request is being made "In order to conduct oversight on matters within the Committee's jurisdiction, including the administration of federal tax law, and to obtain information necessary as a basis for such legislative action as the House may deem necessary and appropriate." See, for example, 2-page letter from Chairman Dave Camp to Daniel Werfel, Acting Commission of the IRS, dated September 20, 2013, available on page 19 of https://www.congress.gov/113/crpt/hrpt414/CRPT-113hrpt414.pdf.

[23] A return is open for six years if substantial taxable income is omitted (Code sec. 6501(e)).

legislation, or from regulations implementing that legislation? Would the president benefit from his new tax proposals? The answers to these questions might help the Committee evaluate prior or new tax legislation.

In addition, are the president's trade, tariffs, and sanctions policies potentially influenced by his business interests at home or overseas? A more complete picture of the president's finances, including the disclosure of foreign accounts and gifts from foreigners (which must be reported on a Form 3520), could help inform the Committee and Congress. Some of the Committee's findings may be relevant to other committees as well (e.g., Foreign Affairs).

Developing legislation: A review of the president's taxes might suggest reforms to current law. For example, it might reveal better ways to report financial relations with foreign entities—and, perhaps, larger penalties for failing to report them. If the president is not paying the appropriate amount of taxes, it might reveal other areas of the tax law to reform, such as real estate taxation or payroll tax compliance.

The tax information could inform Congress on whether new legislation, like H.R. 1, is needed and how to design it, including its appropriate scope. The Committee could use the president's tax returns to evaluate what transpires without disclosure. For example, are conflicts more rampant? What type? Finally, by reviewing the president's return in executive session, the Committee could better evaluate claims that disclosure would infringe upon his legitimate privacy interests. In my view, the public's interest in seeing the tax returns of the president would likely outweigh any countervailing privacy interest, but the Committee could evaluate those arguments better with the president's returns in hand.

CONCLUSION

I believe Congress should enact new legislation to require presidents, vice presidents, and candidates for these offices to disclose their tax returns. Whether or not Congress enacts new legislation, I believe the Committee should, confidentially, obtain President Trump's tax returns using its authority under existing sec. 6103(f) of the Code. After reviewing the information, the Committee could exercise its discretion to determine whether, and how, to release the information.

Chairman LEWIS. Now it is my pleasure to present Mr. Noah Bookbinder. Thank you for being here. I think I remember in another time, another period, your father.

Thank you for being here.

STATEMENT OF NOAH BOOKBINDER, EXECUTIVE DIRECTOR, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON

Mr. BOOKBINDER. Chairman Lewis, Ranking Member Kelly, Members of the Committee, thanks so much for the opportunity to appear before you today to talk about key reforms included in H.R. 1, the For the People Act.

My organization, Citizens for Responsibility and Ethics in Washington, or CREW, focuses on reducing the negative influence of money in politics, promoting ethics in government, and increasing transparency in our institutions. In all of these respects, the For the People Act is a vital first step in restoring trust in our democratic systems.

I am here today to speak to one aspect of this important legislation: the need for transparency in Presidential and vice presidential tax returns. As others on the panel have explained, President Trump's continuing refusal to release his tax returns is a departure from the practice of candidates and Presidents of both parties over the last 40 years. The For the People Act would codify this commonsense principle of good governance for Presidents and vice presidents.

There are a number of important things the public can learn from a President's or vice president's tax return. For example, the President could be concerned with whether the President, vice president, or a candidate paid his or her fair share of taxes. And if this seems like a far-fetched consideration, it is worth recalling the recent blockbuster report that President Trump's family appears to have engaged in an elaborate decades-long tax avoidance scheme. Or the public could want to know more about how a President or vice president approaches charitable giving. In the case of President Trump, the public would be able to build on CREW's work and the subsequent work of New York's attorney general investigating how the President may have misused his now defunct charitable foundation.

However, I would like to highlight one critical function of Presidential and vice presidential tax transparency: to identify and publicly expose potential financial conflicts of interest. If not addressed, these conflicts cast doubt on every aspect of a President's job. The past 2 years have demonstrated this in vivid detail. The public cannot currently have confidence in President Trump's decisions because his finances remain opaque. We cannot know if his decisions are made in the public's interest or in his own financial interest because we don't know what his financial interests are. These unknowns are particularly troubling given President Trump's decision to maintain ownership of his businesses while serving as President.

Understanding President Trump's financial interests could, for example, shed light on exactly how he and his businesses will be affected by the massive tax legislation he championed last year. It could help us understand whether he is receiving funds from for-

eign sources, be they Russian, Saudi Arabian, Chinese, or otherwise. Or we could learn other things about his finances that we haven't even thought to ask yet. Ultimately, tax transparency would open the public's eyes to investigative threads that could lead to greater accountability for the occupants of our Nation's highest offices.

The example of President Trump's tax returns demonstrates one way in which the current provisions in H.R. 1 should actually go further. Simply obtaining the President's individual tax returns will not necessarily shine light onto the hundreds of distinct corporations he owns under the umbrella of the Trump organization. It is equally, if not more important, to obtain the President's business tax returns, something that this legislation does not currently require. I would be happy to work with the Committee to update the legislation to include such a requirement.

One justification President Trump has provided for not disclosing his tax returns is that his returns are under audit. As many have noted, this did not stop others in the past, including even President Nixon, from releasing their tax returns. But more importantly, Congress should consider whether the existing requirement that the IRS audit every President's and vice president's tax returns can realistically serve its purpose. Congress must question whether we can have full confidence in the IRS, which is overseen by a Presidential appointee, to thoroughly review the President's taxes.

Public disclosure of the President's and vice president's tax returns can substantially mitigate these concerns. If the public can ultimately see what is filed, the IRS can be protected against charges that it was too easy or too hard on the President. Public review also has the added benefit of giving the American people a greater ability to evaluate the decisions made by the President and any conflicts that may affect these decisions, something an IRS audit cannot provide.

I will close by reiterating an important point. By ensuring the transparency of Presidential and vice presidential tax returns, H.R. 1 would not only impact this current President, it would force every President and vice president and every major candidate for these positions in the future, regardless of party, to publicly disclose this information. This provision is nonpartisan.

We must ensure the transparency we need at the highest levels of government in order to restore faith that our leaders are acting in the interest of the American people, not in their own interest. For all of these reasons, Congress should implement and indeed strengthen the tax return provision in H.R. 1.

Thank you for the opportunity to address the Subcommittee today. I am happy to answer any questions Members may have.

Chairman LEWIS. Thank you very much, Mr. Bookbinder. Good to see you.

[The prepared statement of Mr. Bookbinder follows:]

HEARING BEFORE THE HOUSE COMMITTEE ON WAYS AND MEANS
OVERSIGHT SUBCOMMITTEE

FEBRUARY 7, 2019

TESTIMONY OF NOAH BOOKBINDER
EXECUTIVE DIRECTOR
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON (CREW)

Chairman Lewis, Ranking Member Kelly, and members of the Subcommittee, thank you for the opportunity to appear before you today to talk about key reforms included in H.R. 1, the For The People Act.

My organization, Citizens for Responsibility and Ethics in Washington, or CREW, focuses on reducing the negative influence of money in politics, promoting ethics in government, and increasing transparency in our institutions. In all of these respects, the For The People Act is a vital first step in restoring trust in our democratic systems.

I am here today to speak to one aspect of this important legislation: the need for transparency in presidential and vice presidential tax returns. President Trump's continuing refusal to release his tax returns is a departure from the practice of candidates and presidents of both parties over the last 40 years. The For The People Act would codify this common-sense principle of good governance for future presidents and vice presidents of both parties.

It is worth considering why this practice developed. Concerns about financial conflicts of interest on the part of government officials date back to the founders, who included several provisions in the Constitution specifically addressing these issues, including the two emoluments clauses. In its response to the Watergate crisis, Congress saw reducing financial conflicts of interest as critical to its mission of restoring the American people's trust in government. The Ethics in Government Act of 1978, which created the current framework for executive branch ethics regulation, was a cornerstone of this post-Watergate effort.

The practice of presidential and vice presidential candidates and officeholders publicly releasing tax returns, however, did not develop out of a top-down mandate. Instead, the practice represents the recognition over the years by people in both parties that understanding the financial interests of a person seeking or occupying high office is critical to the public's evaluation of that person - in other words, to democracy. It further represents a consensus that public release of tax returns – even with the necessary loss of some degree of privacy that entails – is the appropriate way to supplement the existing financial disclosure regime for those seeking or holding these especially high offices.

Congress should recognize the wisdom of this approach and build a framework to support it. That is exactly what Title X of the For the People Act does, and that is why I support the legislation.

There are a number of important things the public can learn from a president's or vice president's tax return. For example, the public could be concerned with whether the president, vice-president, or a candidate paid his or her fair share of taxes. If this seems like a far-fetched consideration, it's worth recalling the recent blockbuster report that President Trump's family appears to have engaged in an elaborate, decades-long scheme to minimize taxes. Or the public could want to know more about how a president or vice-president approaches charitable giving. In the case of President Trump, the public would be able to build on CREW's work, and the subsequent work of New York's Attorney General, investigating how the president may have misused his now-defunct charity.

However, I would like to highlight one critical function of H.R. 1's tax transparency provision: to identify and publicly expose potential financial conflicts of interest.

If not addressed, these conflicts cast doubt on every aspect of a president's or vice-president's job. The past two years have demonstrated this in unfortunately vivid detail. The public cannot currently have confidence in President Trump's decisions in significant part because his finances remain opaque. We cannot know if his decisions are made in the public's interest or in his own financial interest if we don't know what his financial interests are - it's that simple.

These unknowns are particularly ominous given President Trump's decision to maintain ownership of his businesses while serving as president. Understanding President Trump's financial interests could, for example, shed light on exactly how he and his businesses will be affected by the massive tax legislation he championed last year. Tax return information could help us understand whether he is receiving funds from foreign sources, be they Russian, Saudi Arabian, Chinese or otherwise. The president makes many decisions that affect our nation's relationship with these countries, including trade policy. Or we could learn other things about his finances that we haven't even thought to ask. Ultimately, the tax transparency provision in H.R. 1 would open the public's eyes to investigative threads that could lead to greater accountability for the occupants of our nation's highest offices.

I want to be clear about what I mean by "investigative threads." As a former federal public corruption prosecutor, I have experience obtaining and using tax return information in investigations involving government officials. In seeking answers to questions about possible corruption, these returns often provided important, sometimes even critical, information. But it was rarely if ever the case that tax return information *standing alone* provided the answer to the questions we needed to ask. That information needed to be understood in context, compared with other information we had, and viewed as a part of a larger picture. In this way, tax return information represented a critical investigative tool.

Public disclosure of tax returns of those seeking or holding high office in the recent past has generally operated the same way – the candidate's or officeholder's tax returns themselves do not tell the full story. Indeed, candidates for federal office including president and vice-president are required to fill out separate financial disclosure forms that include other types of information that would not necessarily appear on a tax return.

The public financial disclosure form, known as OGE Form 278e, generally collects information on the following:

Part 1 – Filer's Positions Held Outside United States Government
Part 2 – Filer's Employment Assets & Income and Retirement Accounts
Part 3 – Filer's Employment Agreements and Arrangements
Part 4 – Filer's Sources of Compensation Exceeding $5,000 in a Year
Part 5 – Spouse's Employment Assets & Income and Retirement Accounts
Part 6 – Other Assets and Income
Part 7 – Transactions
Part 8 – Liabilities
Part 9 – Gifts and Travel Reimbursements

Not every filer needs to fill out every section of this form in every circumstance, however. For example, presidential and vice-presidential candidates are not required to disclose their sources of compensation in Part 4 when they file their initial financial disclosure, but if a candidate is elected, sources of compensation must later be disclosed on their annual report.

Even where amounts are reported on financial disclosure forms, they are reported with substantially less specificity than would appear on tax returns. They are usually only reported within ranges, not with specific dollar amounts, and the ranges are subject to caps. This means that, for example, if a person has a source of income for which they received any amount greater than $5 million in a year, be it $6 million or $60 million, it appears on the disclosure form as simply "greater than $5 million." Needless to say, the Internal Revenue Service would not accept "greater than $5 million" on a tax return.

This is not to suggest that the existing financial disclosure system is not useful. But it is not perfect, and especially when a president chooses to retain a set of sprawling, complex business interests, it needs to be supplemented. Experience in recent decades teaches us that releasing tax return information for those seeking or holding high office is an effective supplement.

Based on what we do know, President Trump's businesses have provided a vast array of opportunities for those seeking to influence him. In the two years he has been in office, President Trump has made 281 visits to properties from which he continues to profit. Since he assumed the presidency, more than 150 political committees — including campaigns and party committees — have spent nearly $5 million at Trump businesses. At least 13 special interest groups lobbied the White House since President Trump's inauguration, some for the first time, around the same time they also patronized a Trump property. 119 federal officials, 53 members of Congress and at least 33 state officials made visits to Trump properties during President Trump's second year in office alone. During that same year, at least three foreign countries held events at Trump properties. Two of them did so after having held similar events elsewhere in previous years. Also during that same year, President Trump and other White House staff promoted Trump businesses on at least 87 occasions.

The public record discloses more than 1,400 points of contact involving the government, those trying to influence it and the Trump Organization during President Trump's first two years in office. Each of these contacts represents an opportunity for the corruption of the federal government, and each contributes to an unmistakable appearance of corruption.

Viewing President Trump's tax returns is likely to shed additional light on potential conflicts of interest, or to highlight investigative threads that can take the public to that information. But the example of President Trump's tax returns also demonstrates one way in which the current provision in H.R. 1 should go further. Simply obtaining President Trump's individual tax returns will not necessarily shine light onto the hundreds of distinct corporations he owns and controls under the umbrella of the Trump Organization. It is equally, if not more important to obtain the relevant business tax returns – something that this legislation does not currently require. I would be happy to work with the committee to update the legislation to include a requirement that the President disclose the returns of any business in which he has a significant interest.

One justification President Trump has provided for not disclosing his tax returns is that his tax returns are under audit by the Internal Revenue Service (IRS). As many have noted, this did not stop other presidential and vice presidential candidates and officeholders in the past, including President Nixon, from releasing their tax returns. Indeed, the IRS is required to audit the tax returns of every president and vice-president while in office. Congress should consider whether the existing requirement that the IRS audit every president and vice-president's tax returns is sufficient to ensure adequate review of these returns.

Just as it would be troubling for a president to choose a special counsel investigating him, Congress must question whether it is sufficient to have only the IRS, headed by a presidential appointee, looking at the president's taxes. This is not to cast aspersions on the career experts at the IRS, who undoubtedly possess the technical know-how to examine a president's returns, and no doubt would approach the job with the same commitment to fairness they bring to their other work. But just as Congress has recognized the importance of the independence of a Justice Department prosecutor in certain circumstances, Congress must also consider whether it has put the IRS in an untenable situation by requiring it to audit the president's and vice president's tax returns without sufficiently addressing the inherent pressures of that requirement. The history of the former Independent Counsel statute has demonstrated the substantial difficulty of creating a structure that is sufficiently independent without undue risk of overreach. Given these difficulties, I believe that public disclosure of the president's and vice-president's tax returns is a better alternative. If the public can ultimately see what is filed, the IRS can be protected against charges that it was too easy – or too hard – on the president or vice president. Public review also has the added benefit of giving the American people a greater ability to evaluate the decisions made by the President and any conflicts that may affect those decisions – something an IRS audit cannot provide.

I will close by reiterating an important point: by ensuring the transparency of presidential and vice presidential tax returns, H.R. 1 would not only impact this current President. It would force every future president and vice president, and every major candidate for those positions, regardless of party, to publicly disclose this information. This provision is nonpartisan. It

codifies the common sense practices followed by all other modern presidents and vice presidents, a practice followed at least partially by President Trump's own Vice President. For all of these reasons, Congress should implement, and indeed strengthen, the tax return provision in H.R. 1 to ensure the transparency we need at the highest levels of government in order to restore faith that our leaders are acting in the interest of the American people, not in their own financial interest.

Thank you for the opportunity to address the subcommittee today. I am happy to answer any questions members may have.

Chairman LEWIS. Now it is my pleasure to welcome a gentleman back to the Committee who is not a stranger, Mr. Ken Kies, the managing director of the Federal Policy Group.

You may begin, sir.

STATEMENT OF KENNETH J. KIES, MANAGING DIRECTOR, FEDERAL POLICY GROUP

Mr. KIES. Thank you. Thank you.

Chairman Lewis, Ranking Member Kelly, and distinguished Members of the Subcommittee, and also Members of the Ways and Means Committee, I am the managing director of the Federal Policy Group. Thank you for inviting me to speak on tax law related to Presidential and vice-presidential tax returns.

During my time in governmental service as chief of staff of the Joint Committee on Taxation, as well as when I was the chief Republican tax counsel of Ways and Means, I have had the occasion to review the law surrounding the handling and disclosure of tax return information, as well as to advise Members of Congress with respect to thereto. And my comments today are informed by this experience.

Section 6103(a) of the Internal Revenue Code specifically provides, quote, returns and return information shall be confidential, and except as authorized by this title, no officer or employee of the United States shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or employee or otherwise under the provisions of this section.

The code provision has sometimes been described as a general prohibition on the disclosure of tax returns and tax return information. While I agree that the provision does prohibit disclosure, I note that the characterization of this rule as a general restriction is somewhat misleading. Instead, I would describe the provision as a blanket rule against disclosure by any authorized recipient of returns, with disclosure allowed in some limited situations that I will describe later.

For purposes of this hearing, an even more relevant aspect of the blanket restriction as it pertains to Members of Congress and their staff is that the prohibition rule explicitly refers to returns obtained, quote, in any manner with any Member of Congress or employed by one, including returns that were obtained under the provisions of this section. This is a crucial point to remember when considering how the blanket rule against disclosure of returns relates with the limited exceptions provided in this section.

Just because a Member of Congress or employee of such Member is entitled to have returns disclosed to him or her, that Member or employee is still prohibited from then disclosing the returns to another, unless further disclosure is explicitly allowed by reason of this section. To willfully do otherwise is to commit a felony punishable by up to 5 years in prison.

As for the exception that is relevant to Members of Congress and their staff, I read the plain language of section 6103(f) and find no comfort whatsoever that any public disclosure of tax returns is clearly permitted. A sentence in section 6103(f) does refer to one of the three listed committees submitting returns it has received to

the Senate or House or both. This sentence explicitly says nothing about permitting disclosure to the public. It likewise says nothing about public disclosure being permitted when Members have a valid legislative purpose and does not say that the permissive disclosure to the Senate or House overrides the blanket restrictions.

Thus, since every disclosure of returns is prohibited unless it is explicitly allowed, the only conclusion I could feel safe adopting is the disclosure can be made by a listed committee to the House or Senate Members generally but that such disclosure can go no further unless permitted by some other section of which there is no relevant part.

Further, while I acknowledge the existence of a colorable argument that the so-term speech and debate clause of the U.S. Constitution could prevent prosecution of a Member of Congress or staff member for a violation of the tax return confidentiality rules so long as the act was undertaken in furtherance of the performance of their legislative tasks, I would observe that this clause has never been tested or applied by the Supreme Court in the context of a felony violation under Section 6103. Thus, if I were advising a Member of Congress and any of their staff, I would tell them I could provide them no firm comfort on what this clause actually allows them to do with respect to tax returns when they have legally received them under Section 6103. In my mind, the risk to such Members and staff is grave when one considers the potential penalties.

Given everything I have briefly described above, I would never feel comfortable advising a client that he or she could safely disclose, let alone make public, any tax return in a manner that was not unequivocally enumerated in Section 6103. In my capacity as chief of staff of the Joint Committee on Taxation, I never did so nor would I have counseled any of my staff, any Member of Congress, or any congressional staff to ever do so.

That concludes my formal remarks. I thank the Subcommittee for this attention, and I welcome any questions.

Chairman LEWIS. Thank you very much, Mr. Kies, for being here.

[The prepared statement of Mr. Kies follows:]

Testimony of Kenneth J. Kies

Managing Director, Federal Policy Group

Before the

Committee on Ways and Means

Subcommittee on Oversight

United States House of Representatives

Hearing on

Legislative Proposals and Tax Law Related to Presidential

and Vice-Presidential Tax Returns

February 7, 2019

Chairman Lewis, Ranking Member Kelly, and distinguished members of the Subcommittee, my name is Ken Kies. I am the Managing Director of the Federal Policy Group. Thank you for inviting me to speak on tax law related to presidential and vice-presidential tax returns. During my time in governmental service as Chief of Staff of the Joint Committee on Taxation, as well as when I was Chief Republican Tax Counsel for the Ways and Means Committee, I have had occasion to review the law surrounding the handling and disclosure of tax return information, as well as to advise Members of Congress with respect thereto, and my comments today are informed by this experience.

Section 6103(a) of the Internal Revenue Code specifically provides that "[r]eturns and return information shall be confidential, and except as authorized by this title—(1) no officer or employee of the United States…shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or employee or otherwise under the provisions of this section." This Code provision has sometimes been described as a general prohibition on the disclosure of tax returns and tax return information. While I agree that the provision does prohibit disclosure, I note that the characterization of this rule as a "general" restriction is somewhat misleading.

Instead, I would describe the provision as a "blanket" rule against disclosure by any authorized recipient of returns (with disclosure allowed in some "limited situations" I will describe later).

For purposes of this hearing, an even more relevant aspect of the blanket restriction as it pertains to Members of Congress and their staff is that the prohibition rule explicitly refers to returns obtained "in any manner in connection with" being a Member of Congress or employed by one, including returns that were obtained "under the provisions of this section." This is a crucial point to remember when considering how the blanket rule against the disclosure of returns relates with the limited exceptions provided in the section.

Just because a Member of Congress or employee of such Member is entitled to have returns disclosed to him or her, that Member, or employee, is still prohibited from then disclosing the return to another unless such further disclosure is explicitly allowed by reason of the section. To willfully do otherwise is to commit a felony punishable by up to five years in prison.

As for the exception that is relevant to Members of Congress and their staff, I read the plain language of section 6103(f) and find no comfort whatsoever that any public disclosure of tax returns is clearly permitted. A sentence in section 6103(f) does refer to one of the three listed Committees submitting returns it has received "to the Senate" or "House" (or both). This sentence explicitly says nothing about permitting disclosure to "the public." It likewise says nothing about public disclosure being permitted when Members have a valid legislative purpose, and does not say that the permissive disclosure to the Senate or House overrides the blanket restrictions. Thus, since every disclosure of returns is prohibited unless it is explicitly allowed, the only conclusion I could feel safe adopting is that disclosure can be made by a listed Committee to the House Members or Senate Members generally, but that such disclosure can go no further unless permitted by some other section (of which, in relevant part, there is none).

Further, while I acknowledge the existence of a colorable argument that the so-termed "Speech and Debate" clause of the U.S. Constitution could prevent prosecution of a Member of Congress or staff member for a violation of the tax return confidentiality rules so long as the act was undertaken in furtherance of the performance of their legislative tasks, I would observe that this clause has never been tested or applied by the Supreme Court in the context of a felony violation of section 6103. Thus, if I were advising a Member of Congress or any of their staff, I would tell them I could provide them no firm comfort on what this clause actually allows them to do with respect to tax returns that they have legally received under section 6103. In my mind, the risk to such Members and staff is grave when one considers the potential penalties.

Given everything I have briefly described above, I would never feel comfortable advising a client that he or she could safely disclose—let alone "make public"—any tax return in a manner that was not unequivocally enumerated in section 6103. In my capacity as Chief of Staff of the Joint Committee on Taxation, I never did so, nor would I have counseled any of my staff, any Member of Congress, or any congressional staff to ever do so.

This concludes my formal remarks. I thank the Subcommittee for its attention, and welcome any questions.

Chairman LEWIS. I want to thank each member of the panel for being concise. And we want you to continue to give a short answer.

The hearing is now open for questions. I ask that each Member follow the 5-minute rule. And all Members should have an opportunity to ask and answer questions, if we follow the 5-minute rule. That is for the panel also. Okay?

Professor Yin, does the tax law provide any basis for the Secretary of the Treasury to refuse a request for tax information from the Committee?

Mr. YIN. The statute provides no basis for a refusal.

Chairman LEWIS. Furthermore, Professor Yin, can a person release his or her tax return while under audit?

Mr. YIN. I know of no restriction that would prevent a taxpayer from disclosing information even if it is under audit.

Chairman LEWIS. Well, we have heard some people say, I have been audited and I cannot release any information.

Mr. YIN. Well, I think that if I were advising a client and my client's return were under audit, I may well want to have the client not share the information very broadly. And I would provide that advice to the client. But if the question is: there anything under the law that would prevent a taxpayer from disclosing information that is under audit, the answer is I don't know of any such prohibition.

Chairman LEWIS. Thank you very much, Professor.

I now yield my remaining time to Mr. Pascrell. You have been a leader in this effort.

Mr. PASCRELL. Thank you, Mr. Chairman. Thanks for holding the hearing, and thanks for your courtesies.

Every President should release his or her tax returns to the public as a matter of course. And when we have cause for concern over conflicts of—or tax violations, we have every reason to use the authority given to this Committee. The law is on our side. 6103 is very clear. 6103(f) is even clearer, that section of it, of what we have the responsibility to do. For 2 years, I have been highlighting this Committee's authority to do so.

We introduced the Presidential Tax Transparency Act along with Representative Anna Eshoo of California. Our bill would require every Presidential and vice presidential candidate to release their tax returns to the public. I am pleased our proposal is part of H.R.

1, the first bill introduced by Democratic Members of the House in this Congress.

This Committee has oversight over our Nation's tax system and laws. In fact, the Ways and Means Committee has oversight over IRS. Our tax system requires honesty from taxpayers and from the IRS.

The element of good faith is implicit to a functioning tax system. If a President is cheating the system or evading taxes or otherwise violating the tax laws of our country, why should any citizen feel compelled to comply? No one is above the law.

I want to get into questions, because we have great witnesses who have laid it out better than I can. But before I do, I want to enter into the record, Mr. Chairman, with your approval, three specific articles that I think go to the very center, the very heart of this issue. And we're introducing them now.

I ask unanimous consent to enter into the record the chronology of actions taken by this Committee and by the full House by using 6103 to obtain the President's tax returns so that the record has that. The record illustrates the broad support.

Chairman LEWIS. Without objection.

A CHRONOLOGY OF ATTEMPTS TO OBTAIN THE PRESIDENT'S TAX RETURNS

1. **February 1, 2017** – *LETTER* (BRADY) - Rep. Bill Pascrell, Jr. (D-NJ) sent a letter to Ways and Means Chairman Kevin Brady (R-TX) asking him to use his authority under Section 6103 of the Internal Revenue Code to request ten years of tax return documents for President Donald Trump in order to review them in closed committee for conflicts.

2. **February 3, 2017** – *AMENDMENT* (COMMITTEE) - At the subsequent Ways and Means Committee meeting, during a markup of a Views and Estimates Letter, Rep. Lloyd Doggett (D-TX) introduced an amendment that would have forced Chairman Brady to obtain Trump's tax returns for review by the committee. It was voted down on party lines.

3. **February 27, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Pascrell offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. Republicans voted to table the appeal, 229-185, with two Republicans, Walter Jones (R-NC) and Mark Sanford (R-SC), voting "present."

4. **March 1, 2017** – *LETTER* (HATCH) - Pascrell attended a press conference with Senators Debbie Stabenow (D-MI), Ron Wyden (D-OR), and Tom Carper (D-DE) to discuss their efforts to obtain Trump's tax returns via Senate Finance Committee Chairman Orrin Hatch (R-UT). On **March 2, 2017,** Pascrell sent a second letter to Chairmen Hatch and Brady asking them to use their authority under Section 6103 to request Trump's tax returns. 165 members signed on to the letter, including two Republicans (Jones, Sanford).

5. **March 7, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Rep. Anna Eshoo (D-CA) offered a privileged resolution similar to the one Pascrell offered the week before. This was also tabled along party lines, 227-186, though Jones voted with the Democrats opposing the motion to table, and Sanford again voted present.

6. **March 8, 2017** – *AMENDMENT* (COMMITTEE) - The Ways and Means Committee met to mark up the American Health Care Act. Doggett again offered an amendment to force request of Trump's tax returns. It was also voted down on party lines.

7. **March 9, 2017** – *RESOLUTION OF INQUIRY* (COMMITTEEE/FULL HOUSE) - Pascrell introduced a Resolution of Inquiry, which would force the Ways and Means Committee to vote on whether to obtain Trump's tax returns within 14 legislative days. If they do not meet to do so, any member can bring the resolution to the floor for a full vote.

8. **March 15, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Rep. Joe Crowley (D-NY) offered a Privileged Resolution similar to Pascrell. This was also tabled along party lines, 227-186, though Jones voted with the Democrats opposing the motion to table, and Sanford again voted present.

9. **March 21, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Rep. Jared Polis (D-CO) offered a Privileged Resolution similar to Pascrell. This was also tabled along party lines, 227-186, though Jones voted with the Democrats opposing the motion to table, and Sanford again voted present.

10. **March 27, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Rep. Zoe Lofgren (D-CA) offered a Privileged Resolution similar to Pascrell. This was also tabled along party lines, 227-186, though Jones voted with the Democrats opposing the motion to table, and Sanford again voted present.

11. **March 28, 2017** – *RESOLUTION OF INQUIRY RESPONSE* (COMMITTEEE/FULL HOUSE) Ways and Means markup Pascrell Resolution of Inquiry (H. Res. 186). After extensive discussion, measure defeated on party lines in committee and will not be voted on by the full House.

12. **April 3, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Rep. Hakeem Jeffries (D-NY) offered a Privileged Resolution similar to Pascrell. This was also tabled along party lines, 227-186, though Jones voted with the Democrats opposing the motion to table, and Sanford again voted present.

13. **April 5, 2017** – *DISCHARGE PETITION* (FULL HOUSE) - Rep. Anna Eshoo (D-CA) offered a discharge petition, which Leader Pelosi signed, to force a vote on her bill, the *Presidential Tax Transparency Act* (H.R. 5386), which would require any major candidate for President to provide a copy of their tax returns for the three most recent years as of the date of their nomination.

14. **May 16, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) - Pascrell offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. The House voted to table the appeal.

15. **May 23, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) – Rep. Linda Sanchez (D-CA) offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. The House voted to table the appeal.

16. **June 7, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) – Rep. Mike Capuano (D-MA) offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. The House voted to table the appeal.

17. **June 13, 2017** – *PRIVILEGED RESOLUTION* (FULL HOUSE) – Rep. Lloyd Doggett (D-TX) offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. The House voted to table the appeal.

18. **July 11, 2017** – *PRIVILEGED RESOLUTION (FULL HOUSE)* – Rep. David Cicilline (D-RI) offered a Privileged Resolution that would have directed Chairman Brady to request Trump's tax returns. The House voted to table the appeal.

19. **July 27, 2017** – *RESOLUTION OF INQUIRY* (COMMITTEEE/FULL HOUSE) - Pascrell introduced a resolution of inquiry (H. Res. 479), which would force the Ways and Means Committee to vote on whether to obtain Trump's personal and business tax returns within 14 legislative days.

20. **September 7, 2017** – *RESOLUTION OF INQUIRY* (COMMITTEE) -- Ways and Means Committee considers Pascrell Resolution of Inquiry (H. Res. 479). The measure was defeated on party lines in committee and was not voted on by the full House.

21. **November 9, 2017** – *AMENDMENT* (COMMITTEE) The Ways and Means Committee met to mark-up H.R. 1 ("The Tax Cuts and Jobs Act"). Mr. Pascrell offered an amendment to force a request of Trump's tax returns. It was also voted down on party lines.

22. **December 20, 2017** – *LETTER* (TRUMP) Rep. Bill Pascrell, Jr. (D-NJ) sent a letter to President Donald J. Trump urging him to release his tax returns in the name of transparency, citing Trump's many promises to release his tax returns for public analysis.

23. **March 27, 2018** – *LETTER* (BRADY) - Pascrell issued a letter to Ways and Means Chairman Kevin Brady (R-TX-08) calling for the Committee to conduct oversight of foreign profits President Trump and the Trump Organization have received and to seek Trump's tax returns, citing a series of articles highlighting questions about profits the Trump family has reaped from foreign entities.

24. **July 26, 2018** – *LETTER* (IRS/FEC) - Pascrell led 94 Members of Congress in sending a letter to the heads of the Internal Revenue Service (IRS) and the Federal Election Commission (FEC) demanding they launch an investigation of Donald Trump and the Trump Foundation, including a formal probe into Trump's tax returns.

25. **September 13, 2018** – *AMENDMENT* (COMMITTEE) Ways and Means markup amendment offered by Pascrell, Doggett, Crowley would require Ways and Means Chairman to request President's tax returns and those of his businesses. The measure was defeated on party lines in committee and was not voted on by the full House.

26. **January 9, 2019** – *BILL* (FULL HOUSE) - Reps. Pascrell and Eshoo introduced H.R. 273, the Presidential Tax Transparency Act, which would require Presidents and presidential candidates to publicly disclose their ten most recent federal income tax returns.

Mr. PASCRELL. Thank you. Mr. Rosenthal have you ever looked at a President's tax returns? And if so, what did you find, since you participated in that expose last summer in the New York Times, to some degree? What did you find, Mr. Rosenthal?

Mr. ROSENTHAL. So I have worked at the Tax Policy Center for 7 years. I have been through two Presidential cycles.

Mr. PASCRELL. Could you speak up, please.

Mr. ROSENTHAL. I have worked at the Tax Policy Center for 7 years. I have been through two Presidential cycles. I have been asked many a questions about what has been released by candidates and officeholders.

With respect to, say, President Trump, I have seen or at least believe to have seen his 2005 and 1995 returns which, in my judgment, showed some aggressive tax planning. I spent a lot of time with The New York Times and other media helping to translate what you see when you find glimpses of an officeholder's tax returns. And we have been able to determine, in some instances using other court documents and the like, for instance, the most likely source of the $916 million of losses that the President generated in the 1990s and could have eliminated his taxes for a couple of decades.

So I have seen a lot, and I have published my findings in various periodicals, and there is a lot to find.

Mr. PASCRELL. Mr. Chairman, thank you for yielding, and I appreciate it very much. We will be back later.

Chairman LEWIS. Thank you very much.

I understand now that Mr. Kelly would like to defer till later.

I now recognize the gentlelady from Indiana for 5 minutes.

Mrs. WALORSKI. Thank you, Mr. Chairman. Thank you to you experts that are here. We so much appreciate it. I am grateful for the information you bring with you.

I would like to direct my question to Mr. Thorndike. Are Presidential candidates required to release their tax returns?

Mr. THORNDIKE. No, they are not.

Mrs. WALORSKI. In your experience researching the history of Presidential returns, is there a set of rules that governs what Presidential candidates do and do not have to release?

Mr. THORNDIKE. There are no written rules. There are norms, but that is hard to describe them as, like, well defined.

Mrs. WALORSKI. Or required. Right.

So Presidential candidates can choose what tax return information, if any, to release. Isn't that correct?

Mr. THORNDIKE. Yes. And, indeed, they have, which is why they have varied quite so dramatically over time.

Mrs. WALORSKI. So, Mr. Thorndike, how many years of returns is typical for a Presidential candidate to release?

Mr. THORNDIKE. It is really not possible to answer that word typical—with anything. I mean, it ranges from 1 to 33.

Mrs. WALORSKI. So there is no set number.

Mr. THORNDIKE. And there is not even, really, a trend. I mean, there are some single releases in the beginning. There are a couple recently that released only two. But Jeb Bush released 33 this last time around.

Mrs. WALORSKI. Right. There is no set number.

Mr. THORNDIKE. There is no obvious trend.

Mrs. WALORSKI. Right. Then in the 40-plus years of Presidents and Presidential candidates releasing their returns, have they ever released the returns of businesses in which they have some form of involvement, that you are aware?

Mr. THORNDIKE. So I cannot answer that question definitively, because we don't actually have a lot of those returns which were released as part of a campaign but are not archived anywhere, so we don't know where they are anymore.

Senator Romney did—when he ran, he did release returns for some of his family trusts. Those are the only ones that I am certain about.

There are a few times when candidates or, more specifically, the spouses of candidates have refused to release tax returns related to trusts or other businesses. Once Geraldine Ferraro's husband and then again Senator Kerry's wife.

Mrs. WALORSKI. But to summarize your responses, Mr. Thorndike, Presidential candidates are not required to release their returns. There is no standardized process for releasing Presidential returns. The level of disclosure varies widely, and business income tax returns have not been a part of the disclosure process.

So, really, Mr. Thorndike, what we are talking about here, and I believe you called this voluntary disclosures, what we are talking about here is an informal tradition. It is not a law.

Mr. THORNDIKE. It is not a law. And it is an informal tradition, a long one, but as I say in my testimony, I think those sorts of traditions are not the way to handle these sorts of issues. If we believe that this kind of disclosure is important enough that we want them to do it, then we should require it. If we don't think it is that important, then we don't need to require it. I don't think we should let a tradition handle it.

Mrs. WALORSKI. And yet we are holding this hearing today under the guise of an academic discussion when in reality this is all about weaponizing our tax laws to target a political foe. Doing this, I believe, sets a dangerous precedent, eroding the very laws put in place to protect the private tax return of each and every American.

Privacy and civil liberties should still matter in this country. And I, for one, am here to protect those, every single individual in this country, every single American.

And with that, Mr. Chairman, I yield back.

Chairman LEWIS. Pursuant to the committee rule 14, and based on the Members in attendance, we will question the witness two Democrats to one Republican.

The chair now recognizes Ms. DelBene.

MS. DELBENE. Thank you, Mr. Chairman. And thanks to all our witnesses for taking your time to be with us today.

I want to start with you, Mr. Kies. Given your testimony, would you have advised Committee Republicans to release taxpayer information in 2014?

Mr. KIES. No, I would not have advised them to do that.

Ms. DELBENE. Thank you. Also, current policy requires that Presidential tax returns be automatically reviewed, but I am con-

cerned that the IRS may not have the ability to accurately and fairly carry this out free from political pressure.

So, Professor Yin, according to the report on the impeachment hearing, President Nixon reportedly received a letter from the IRS stating, quote, our examination of your income tax returns for the years 1971 and 1972 reveal that they are correct. I want to compliment you on the care shown in the preparation of your return, end quote.

Upon exam, a congressional investigation found that President Nixon actually owed nearly $480,000. What does this show about the ability of the IRS to impartially review the President's tax returns?

Mr. YIN. Congresswoman DelBene, I can't comment on the impartiality. I think it is suggestive that there was a problem. Whether it is simply incompetence or partiality, I don't know.

In fact, what happened in that instance is, after the Congress—the Joint Committee did its determination, the IRS went back and actually audited again and essentially confirmed the Joint Committee's determination and reversed its own first determination. So there was obviously a problem with the first audit, but I can't tell you whether it was out of a feeling of partiality or whether there was undue influence or simply some people weren't doing the job they were supposed to be doing.

Ms. DELBENE. But by allowing others to review those documents, we were able to find out that they were not actually correct.

Mr. YIN. Well, I think it certainly raises an issue that might be worthy of the Committee's concern, which is that if a very high-ranking official is being audited, whether it is the President or the Treasury Secretary or somebody of that nature who has a supervisory role over the auditors, it seems to me that it might be a good policy for the Committee to double check that type of situation.

Ms. DELBENE. Thank you.

Dr. Thorndike, given the current pressures on the IRS and what happened with Nixon, should the IRS requirement to audit tax returns of Presidents and vice presidents be codified?

Mr. THORNDIKE. As with the disclosure requirements, I think that these would be better off codified than handled through the internal policies of the IRS. And to just—I just wanted to add that, during that Nixon episode, there was very real debate and real concern about the sufficiency of an IRS audit. And there were calls for outside auditors. Or what that even meant, they weren't sure. And eventually their answer was the joint committee could be that outside auditor. But there was real concern that the IRS had missed this the first time through. Part of the explanation is that they actually had a change of commissioner in the middle of that, and the new commissioner, I think, took a much more vigorous approach to this.

But I think it is quite reasonable for people now to worry based on the actual experience in the Nixon Administration that the IRS may not be able to really vigorously enforce the law relative to the President. I think they try very hard. I don't mean to slander the IRS. I see this as a structural problem, not as a criticism of the IRS itself.

Ms. DELBENE. Thank you.

Professor Yin, I will go back to you. The Committee must make a written request to receive a return. Is there any limitation on what returns or return information can be requested?

Mr. YIN. No, there is no limitation. The Committee can ask for anything it wants. I think good practice would suggest that the Committee be somewhat targeted in its request simply because it would take a lot of time if the requests were very broad.

Ms. DELBENE. Thank you. Thanks to all of you.

And I yield back, Mr. Chairman.

Chairman LEWIS. The chair now recognizes for 5 minutes Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. And to our witnesses, your testimony has informative as we work through this very important issue, so I want to thank you, first and foremost, for being with us.

I think it is long past time for this Committee to do its constitutional duty and operate as a coequal branch of government. And I can say that I have been proud to be part of the Committee and House floor efforts to properly exercise our authority. Because as Members of Congress, we take an oath to uphold and defend the Constitution. And when we swear that oath, we recognize our responsibility and our duty to uphold the integrity of this institution. Holding the executive branch accountable is a bear minimum step, I think, in fulfilling that constitutional duty.

To me, here the facts are pretty simple. The American people deserve a full picture of potential conflicts of interest for those who have the privilege of holding the highest elected offices in our country or those who aspire to hold them.

Transparency is a pretty good thing. The American people have the right to know the financial interests of those that are crafting policy that affect them. And hearings like this and passage of legislation like H.R. 1 will move our country forward, not backward, in the issue of transparency.

Since this Administration began, we have seen countless examples of why this information should have been disclosed, like in every other Presidential candidate in modern history has done before for the last several decades.

From tax reform to dealing with foreign entities and individuals, the American people deserve to know exactly whether their executive stands to personally benefit or be unduly influenced. The personal business endeavors of the leader of the free world should be held to very high standards indeed.

Dr. Thorndike, you previously mentioned that you would like to see the release of tax returns codified. Are you worried that this tradition, because it is just a tradition right now, is being eroded?

Mr. THORNDIKE. I am concerned that it may, in fact, be completely broken. And I think that we can't count on traditions.

Again, if we believe that this sort of transparency is important, and I do, then we can't really depend on a tradition to get the job done. And, I mean, just as an example of that, let's think about the—maybe the most hallowed tradition in American politics, which was the two-term Presidency which was revered by everyone until it wasn't. And when Franklin Roosevelt broke that tradition,

Congress responded by actually making it a law—or the Nation responded by making it a part of the Constitution.

I think if things are important enough, and I believe that transparency is one of those things, we should, in fact, require them legally, rather than just hectoring people to try to get them to do what we want them to do.

Ms. SANCHEZ. I happen to agree.

And, Mr. Thorndike, if Presidential hopefuls' tax returns are released, they are redacted so that sensitive information like Social Security numbers and other important information is not released to the public. Is that correct?

Mr. THORNDIKE. Yes. Social Security numbers have been blacked out for a long time. They were not originally. I think this was before the era of rampant identity theft. But they have been now, and they are routinely. I mean, Presidents have been blacking them out for 40 years.

Ms. SANCHEZ. Thank you.

Professor Yin, you just heard Mr. Kies' testimony. Do you have any comments with respect to his testimony?

Mr. YIN. Yes, I do. I think a few words of history would help to clarify the misunderstanding that Mr. Kies seems to have on this point.

In 1924, when Congress began thinking about the law that is before us today, Secretary Mellon vigorously objected and was concerned specifically about the potential disclosure of the tax return information to the public. And he urged over on the Senate side in a Senate hearing two changes. One is, he said, any committee that receives the information must do it in closed session. And, second, if any of the information goes to the full House or full Senate, it also must be done out of public eye with nothing included in the Congressional Record.

Congress in 1924 agreed with the first step, which is why, if you were to seek information today, you would need to do it in closed session. But it specifically rejected the second step. And the reason was that it was inconsistent with the congressional goal in 1924, which was, as a coequal branch of government, it wanted to give itself the exact same rights as the President. The President at the time had the ability to obtain and disclose anybody's tax returns.

Fast-forward to 50 years later, the same issue arose in 1976. And what Congress did is they took away the ability of nontax committees to make disclosures, but they did not take away the tax committee right.

If I could add one final point, which is that some of you may be wondering, well, why does the statute, as Mr. Kies suggests, the statute only says you may "submit" and not make a public disclosure? And although I don't find anything specific in the historical record on that point, I think there is a very easy explanation. And it goes to the fact that in the mid 1920s, party affiliation was not nearly as important as it is today. There were a lot of progressive Republicans who tended to vote with Democrats on issues like this one, issues of disclosure, investigations, and so forth.

Meanwhile, Congress was controlled by the old guard Republicans. The leaders of Congress did not want a single committee to make the determination of whether something is disclosed to the

public or not, because they didn't know what the specific makeup of that committee might be. It might have a number of progressive Republicans on it who would vote in favor of disclosure. They wanted the full House or the full Senate to make that determination, and that is why they developed this procedure where all the Committee can do is to submit——

Chairman LEWIS. Thank you, Professor.

Mr. YIN [continuing]. To the House and Senate.

Ms. SÁNCHEZ. Thank you. I am sorry. My time is expired.

But, Mr. Chairman, I would ask unanimous consent to submit a letter from the former acting director of the Office of Government Ethics, Don Fox, in support of Title X of H.R. 1.

Chairman LEWIS. Without objection. Thank you very much.

February 5, 2019

The Honorable Elijah Cummings
Chair, House Committee on Oversight and Reform
United States House of Representatives
2471 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

I am writing to voice my support for H.R. 1, "For the People Act of 2019," and specifically Titles VIII and X of H.R. 1. If enacted, this legislation will greatly enhance public confidence in the integrity of the United States Government. I served my country from 1982 until 2013, as an active duty officer in the United States Navy, as a member of the Senior Executive Service in the Department of the Air Force, as the General Counsel of the United States Office of Government Ethics (OGE), and as the Acting Director of OGE from 2011 until 2013. OGE was created in 1978 as one of many much needed post-Watergate reforms, along with public financial disclosure for senior government officials, including those of the President and the Vice President. H.R. 1 builds on those principles and 40 years of experience, and provides long-needed updates in ethics legislation.

While I was at OGE, I worked with both the Bush and Obama Administrations. Both President Bush and President Obama supported OGE and its mission and took steps to ensure their personal finances and interests were transparent to the public. This included releasing their personal income tax returns. Title X of the H.R 1 will ensure that our current President, Vice President, and future occupants of those offices will, as a matter of law, make full disclosure of their financial interest and sources of income. These are important measures to codify into law.

Title VIII of the Bill also provides many much-needed updates to the authority of the Director of OGE to oversee and enforce ethics laws and regulations across the Executive Branch. Among those provisions of the Bill I support are those that extend the cooling off period between senior Executive Branch appointees and their former employers to two years. Additionally, H.R. 1 removes any ambiguity as to whether the Executive Office of the President is subject to certain provisions of the Ethics in Government Act and oversight by OGE. Finally, the Bill would codify into law important principles of transparency for Presidential transitions. These and many other provisions of the Bill will strengthen the integrity of our democracy, and I commend the Committee for engaging in this important work.

Thank you for this opportunity to comment on H.R. 1 and your support for ethics reform.

Sincerely,

Don W. Fox

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Chairman LEWIS. The chair now recognizes for 5 minutes Mr. LaHood.

Mr. LAHOOD. Thank you, Mr. Chairman, I want to thank the witnesses for your testimony here today.

In a prior career, I was honored to serve as a Federal prosecutor and a State prosecutor. I appeared before many grand juries. Section 6103 under the statute allows the Federal grand jury to subpoena tax records.

I guess as I look at this issue, obviously, it is not a surprise to anybody, we have an ongoing independent counsel investigation, a grand jury that has been impaneled for over 18 months. Out of that grand jury investigation have been a number of indictments related to tax fraud.

Clearly under this grand jury, the independent counsel, as with others over the last 40 years, there is the broad authority to go after tax records, look at criminal violations, and look at civil violations. I have no doubt that is ongoing today.

I guess as I look at this, I am a little perplexed and confused on why we would give the authority or why we would have the chairman of the Ways and Means Committee ask the Department of Treasury for the President's tax records.

As I look at the last 40 years of the independent counsel investigation statute, I have been trying to figure out whether there has been another example of this. I have not seen any so that causes me some real concern.

I guess, Professor Yin, you are the historian. Can you provide the Committee with an example of where the chairman of the Ways and Means Committee has asked the executive branch for their taxes when there is an ongoing Department of Justice independent counsel investigation?

Mr. YIN. Congressman LaHood, I can't think of an example off the top of my head, but I think it is important to understand——

Mr. LAHOOD. Thank you. Reclaiming my time.

Would it surprise you to learn that one does not exist?

Mr. YIN. Well, again, I can't think of one off the top of my head. The authority itself has been rarely invoked, so——

Mr. LAHOOD. Thank you.

Mr. YIN [continuing]. It is clearly just a handful of situations.

Mr. LAHOOD. Thank you.

Dr. Thorndike, can you provide the Committee with an example of where the chairman of the Ways and Means Committee has asked for the President's tax records when there is an ongoing independent counsel Department of Justice investigation?

Mr. THORNDIKE. No.

Mr. LAHOOD. Do you have any evidence to support that that has been done in the past?

Mr. THORNDIKE. I am not aware of anyone having requested the President's tax returns in the past.

Mr. LAHOOD. While there is an ongoing independent counsel investigation?

Mr. THORNDIKE. Yeah, I mean—I mean, I—but has there ever been any—have they ever requested one?

Mr. LAHOOD. Again, would it surprise you to learn that that in fact has not happened?

Mr. THORNDIKE. No.

Mr. LAHOOD. Okay. Mr. Rosenthal, same question to you. Can you provide the Committee with an example of when that has occurred?

Mr. ROSENTHAL. I am unaware of a historical record on this point.

Mr. LAHOOD. Thank you.

Mr. Bookbinder.

Mr. BOOKBINDER. I guess I would say that I believe the Presidents have voluntarily disclosed their tax returns while under independent counsel investigation. So I am not sure the issue would have come up.

Mr. LAHOOD. So let me ask you on that point, Whitewater was an independent council investigation, correct? During that time, do you know if the Ways and Means chairman asked for the President's tax records?

Mr. BOOKBINDER. I don't know, but I believe the President voluntarily disclosed them.

Mr. LAHOOD. So President Clinton voluntarily disclosed them. Is that your testimony today?

Mr. BOOKBINDER. You know, I would really defer to the historians, but my sense is that for 40 years, Presidents routinely have voluntarily disclosed tax records.

Mr. LAHOOD. Would you be surprised to learn that the chairman of the Ways and Means Committee has never asked for that with an ongoing independent counsel investigation?

Mr. BOOKBINDER. I don't have any reason to think differently than the historians on this panel.

Mr. LAHOOD. Well, thank you for that.

I guess going back to my original thoughts on this, as I look at it, we have had approximately 30 independent investigations by DOJ. The broad authority that they have, like this independent counsel has, is real. So to think that this Committee would want to be engaged in asking the Department of Treasury for the President's tax records again is confusing to me. It has never been done. And as I look at what this Committee should be based on, this seems to me like a waste of time of resources and energy here.

As we talked, Professor Yin, you did a great job talking about the legitimate purpose for why this should be used. I look at the legitimate purpose and the legal purpose on this and I do not see it. I go back to what a number of my colleagues said on weaponizing the Tax Code and setting a precedent that has never been done. We should all be concerned about that.

Thank you. I yield back.

Chairman. LEWIS. The chair now recognizes for 5 minutes Mr. Suozzi.

Mr. SUOZZI. Thank you, Mr. Chairman. Thank you so much for conducting this hearing. And thank you to the witnesses for your time and for your expert opinions.

Dr. Thorndike, I was going to ask this question, but just in response to my friend Mr. LaHood's questions, did President Clinton voluntarily disclose his tax returns?

Mr. THORNDIKE. Yes, every year that he was in office and while running.

Mr. SUOZZI. So there would be no need for the chairman of Ways and Means to ask for his tax returns despite the fact there was an investigation going on because they were disclosed publicly?

Mr. THORNDIKE. Yeah. I mean, more generally, there would have been no need to request any President's tax returns in the last 40 years because they have all been a matter of public record.

Mr. SUOZZI. Okay. I really want to focus on H.R. 1 and the conflict of interest questions. That is the thing that I am most concerned about. We have a duty here to try and protect the American people and to make sure that we are doing our jobs. This can't be a partisan thing; it has got to be something we are doing to follow our duties under the Constitution to make sure that the public has the information that they need.

Mr. Thorndike, you told me earlier that your doctorate is in history of 20th century politics in America. So what would be examples of conflicts of interest that someone might have had throughout history or maybe something that was uncovered in some of these disclosures that have taken place? Or if you can't think of a specific instance of something that has been discovered, what would you speculate could be a potential type of conflict? Give us, like, real type of examples.

Mr. THORNDIKE. Well, I mean, I am not aware of there ever being any discovery of financial conflicts of interest involving an American President. They may have been there and not revealed. Most Presidents have put their assets in blind trusts, so it is not clear whether or not the President would even be aware of what those conflicts might be.

I mean, you know, one could imagine that any piece of legislation, if it is going to change the Tax Code in a way that benefits the President, might be of relevance to the President. Is that a conflict of interest? I mean, that is hard to know.

Mr. SUOZZI. Well, it is really the appearance of a conflict of interest is what we are most concerned about, isn't it?

Mr. THORNDIKE. Yes.

Mr. SUOZZI. For example, President Johnson had a lot of business interest, for example. Would there be potential conflicts of interest based upon your knowledge of his history?

Mr. THORNDIKE. I would imagine so. I mean, this was before Presidents with releasing their tax returns, so we wouldn't know exactly what they are.

Mr. SUOZZI. So, Mr. Bookbinder, you talked about different types of conflict of interest that could potentially exist. What are the ones that you are concerned about most?

Mr. BOOKBINDER. Well, I would just first of all say that a part of the reason why it is hard to find a historical example is because no President has retained massive global business interests the way that President Trump has previously. So we are really in unchartered territory here. But I would be very interested in the most basic conflicts kinds of questions in terms of how would the President's own tax interests be affected by the changes to the tax law he has made.

And then we have also seen that this President has had extensive business dealings with foreign interests. That is something we could learn more about from—potentially from tax returns. That could be incredibly——

Mr. SUOZZI. How would we find them in a tax return, you know, if it is his individual tax returns? Would the individual tax returns be sufficient or would you need to see his business tax returns as well?

Mr. BOOKBINDER. I mean, of course it is hard to know exactly what would be in his tax returns. It may well be that if he is receiving foreign income, that he would be disclosing that. But certainly with the kinds of very complex business interests with literally over 500 different interrelated companies that this President has, it points out the importance of getting those business tax returns, which are going to give a lot more—potentially a lot more information about where the money is coming from and what——

Mr. SUOZZI. So it doesn't have to be specific to President Trump, but could you give an example of a foreign interest in a business that would be a conflict for a chief executive?

Mr. BOOKBINDER. I mean, certainly—really almost—for instance, if there were—if a President had an LLC or some other kind of company which had a foreign—which had a partner that was a foreign company, potentially——

Mr. SUOZZI. So an investor could be someone from a foreign country that you could have undue influence?

Mr. BOOKBINDER. Exactly.

Mr. SUOZZI. What would be a type of businesses that a President could have an interest in that, if money was brought in through that business, would potentially impact the President's decision or vice president?

Mr. BOOKBINDER. Well, for instance, a lot of foreign governments have very extensive funds that invest in businesses. And so if there was a sovereign fund that was putting money into, say, a construction project, if there was a Saudi fund or a UAE fund, that could affect the way the President looks at any decision that involves that country, conceivably.

Mr. SUOZZI. Okay. My time is about to expire.

I yield back, Mr. Chairman. Thank you.

Chairman. LEWIS. Thank you very much.

Now that you are recognized for 5 minutes, Ms. Chu.

Ms. CHU. Mr. Yin, I understand that the chair of Ways and Means has the authority to ask for the President's tax returns. Then Ways and Means can vote to submit it to the House, and then the House can vote to make the returns public. Mr. Kies made a startling assertion when he said that if the Committee votes to release any tax return information to the full House, it would risk a criminal violation. In fact, he talked about a felony that would be worth 5 years in prison. Based on your expertise, do you agree with his interpretation?

And I would like to also ask, do we indeed have the legal authority to obtain these tax returns and to submit it to the House to make it public? And why is it that we have had this authority for 100 years?

Mr. YIN. Thank you, Congresswoman Chu. I don't agree with his view. I think that the historical record is very clear as to what the intention of Congress was in creating this authority for the tax committees, and it was to allow the potential of a public disclosure. I think that to think otherwise right now would require us to believe that Congress forfeited its ability to exercise its informing function with respect to tax return information. That is, nobody could ever inform the public about any matter of importance to the government if it involved the disclosure of tax return information without suffering a criminal penalty. I don't believe that is the case. That would be an inconceivable outcome, in my view.

And I would further add that in the few instances where this authority has been used, in every single instance, there has been a public disclosure at the end of that exercise of the authority. And I just commend to you the floor statement of former Ways and Means chairman, Wilbur Mills, in 1974 when he submitted the Nixon report to the House and he explained in just a few paragraphs exactly his understanding of what he was doing and why he was doing it. And it is exactly consistent with the idea that he was doing it so that the report could become public.

Ms. CHU. Mr. Bookbinder, some opponents of requiring the disclosure of Presidential tax returns as written in H.R. 1 argue that candidates are already required to file a financial disclosure form or OGE Form 287e. Can you explain the primary differences between the information found on the disclosure form and the information found on a tax return and why it would be critical, in fact, to have a tax return involve a financial disclosure?

Mr. BOOKBINDER. Sure. There are a number of differences. One of the most stark ones is that, for instance, for income on a financial disclosure, any income over $5 million is simply a box that says over $5 million. So somebody could be making $6 million or $600 million and we wouldn't know the difference looking at their financial disclosure form. Obviously, a tax return is going to be much more precise. There are a lot of areas from loans to investment partners where we are likely to get very different information from the tax returns than we get from the personal financial disclosure form.

Ms. CHU. How about the issue of whether the candidate has paid taxes or has avoided taxes?

Mr. BOOKBINDER. Absolutely. And the personal financial disclosures are not going to provide any information about what taxes somebody paid, they are not going to give any information about charitable giving. And those are things that are potentially very important for the American public in evaluating a candidate and evaluating a President.

Ms. CHU. And, Mr. Rosenthal, you said—you discussed when it would be appropriate to submit a request under Section 6103, for instance, when there has been a refusal by the office holder to divest financial interests in a large empire or a refusal to transfer their interests in a blind trust. Why is it important for Congress to obtain the office holder's tax returns and other tax information?

Mr. ROSENTHAL. Well, in my written testimony, I described the unusual circumstances in which the Committee might seek information from tax returns, one of which being if the President has

not divested his financial interests in a sprawling business or transferred to a blind trust. In that circumstance, the possibility of the President having income from many different sources is pretty likely. And so to see those partnership returns and the business returns could be pretty important. I would point out, as Congressman Suozzi was asking the other witness here about partnership returns, I could tell you line 16 of the partnership return asks: "does the partnership have any foreign partners." Line 20 of the partnership return asks: "enter number of partners that are foreign governments."

And so when there is a sprawling global economic empire that is comprised of LLCs and partnerships around the world, there are just a lot of questions to be asked. The 1040 is merely the collector of composite information without disclosing the kinds of detail you might like to have.

Mr. SUOZZI. Mr. Chairman, let the record reflect that my name is Suozzi, not Suozzi.

Mr. ROSENTHAL. I apologize.

Ms. CHU. I yield back.

Chairman. LEWIS. Thank you.

The chair now recognizes for 5 minutes Dr. Wenstrup.

Mr. WENSTRUP. Thank you, Mr. Chairman. I appreciate that.

Let me start with you, Mr. Kies. What is the purpose of the IRS?

Mr. KIES. To collect the revenue to fund the Federal Government.

Mr. WENSTRUP. What is the purpose of an audit conducted by the IRS?

Mr. KIES. To hopefully make sure that people, when they are voluntarily complying, are actually—are complying with the statues of which are, in some cases, quite complex, but that is the purpose of audits.

Mr. WENSTRUP. And the President and vice president get audited every year?

Mr. KIES. Correct, according to law now.

Mr. WENSTRUP. Okay. So, Mr. Pascrell, you said something before that really hit home. You said no one is above the law, and I agree with you 100 percent.

Is it the law that the President or vice president bring forward their tax returns to the American people?

Mr. KIES. Is it the law that what?

Mr. WENSTRUP. Is it a law that the President or vice president bring their tax returns forward to the American people?

Mr. KIES. As I think we have confirmed——

Mr. WENSTRUP. We have seen testimony on that. That is not the law.

Mr. KIES. That is correct.

Mr. WENSTRUP. And no one is above the law. But at the same time, no one should be forced to violate a law that maintains their privacy. You know, as a doctor, I think about what we go through to make sure we understand HIPAA and the privacy of our patients and how important that is. And is there for a reason. That privacy is there for a reason for patients to be protected from disclosure their private information and especially about their healthcare or other personal information. Why is that? In part, be-

cause people can take something from their health record and possibly use it for nefarious means or for political purposes, if they so choose. That is the purpose of that, whether it is an innocent part of your healthcare record or not.

So I kind of look at this the same way. I also want to bring up, maybe any of you can tell me, and I know in the past, some Presidents have put forth their health record, and given the results of their entire physical. Is that true? Can anyone attest to that? I know you are mostly tax experts, but is that true?

Mr. KIES. And some have not.

Mr. WENSTRUP. And that should be their choice. That should be their privacy. We have the checks and balances in place. We have the audits in place. But people, every American, deserves their privacy. I compare the two. Let's take an example. And I was not around to necessarily know, but America did not know that President Roosevelt could not stand. My guess is maybe he wanted to keep that private so it wasn't used against him for nefarious purposes.

I think of the privacy of American citizens at every level, whether it is their healthcare or their tax returns. There are other checks and balances in place for the President and vice president, and they have their rights, just like each and every one of us.

With that, I would like to yield the balance of my time to Mr. Kelly.

Mr. KELLY. Thank you, Doctor.

Just while you are all there, I am trying to understand this, is there anybody that doubts that the President or the vice president's tax returns are not being audited by the IRS?

Mr. PASCRELL. Right here.

Mr. KELLY. Doctor. Dr. Thorndike.

Mr. THORNDIKE. I don't doubt that they are being audited.

Mr. KELLY. Professor Yin.

Mr. YIN. I really don't have any knowledge on that.

Mr. KELLY. Oh, yes, but you do. You are the historian. Are you are telling me that you don't know that the President and the vice president's taxes are being audited?

Mr. YIN. I know what is in the IRM, but I don't know whether in fact that is being carried out. I have no knowledge of that.

Mr. KELLY. Okay.

Mr. Rosenthal.

Mr. ROSENTHAL. Like Professor Yin, I have read the Internal Revenue Manual which calls for——

Mr. KELLY. So the fact that we all know that they get audited to the fact that you weren't there to see the audit, makes you wonder if it actually is being done?

Mr. ROSENTHAL. Whether the President is being audited or not is tax return information and cannot be disclosed, and so to ask——

Mr. KELLY. Not until we had this meeting tonight.

Mr. ROSENTHAL. Not until a law were passed.

Mr. KELLY. Okay. I get it. I get it.

Mr. Bookbinder.

Mr. BOOKBINDER. No, the same. We certainly don't know what manner of audit was done, assuming it was done.

Mr. KELLY. Okay.

Mr. Kies.

Mr. KIES. I think it is highly unlikely that the IRS is not auditing the President and vice president, given what their own Internal Revenue Manual says. I find that inconceivable.

Mr. KELLY. I think we all know that, especially if I was a historian that studied this, I would have pretty good idea of what is taking place.

So the only difference tonight is we are talking about the ability to make this President, this duly-elected President's tax returns public.

Thank you. I yield back.

Chairman. LEWIS. The chair now is pleased to recognize for 5 minutes Ms. Moore.

Ms. MOORE. Thank you so much, Mr. Chairman. And I am, again, so pleased to be a Member of this Subcommittee and appreciate the witnesses for their patience today.

I just came off of the Financial Services Committee to—on this body, and one of the things that we were looking at was the unusual lending pattern of Deutsche Bank to the President of the United States. Deutsche Bank had a subsidiary called VTB—I can't say the Russian name, so VTB. And at some point—I am just giving you background for my question—Donald Trump had borrowed $600 million and owed another $300 million, and they had called for a $40 million payment and he said, as a result of an act of God, the financial meltdown in 2007, 2008, that he shouldn't have to pay it back. He was in court in New York. Didn't want to pay Deutsche Bank back. Suddenly, he left the commercial real estate division of Deutsche Bank and went to the private wealth fund, VTB Bank, a bank that certainly had many Russian oligarchs who invested in that. Suddenly, his debt was paid off and they offered him an additional $25 million.

VTB Bank also is associated with this spy that was just—the sanctions removed and so on and so forth. So other banks couldn't believe it, they said are you F'ing, kidding when Donald Trump was given this loan by Deutsche Bank.

So we have a letter here from our distinguished Ranking Member saying if there are valid concerns with financial disclosures, then let's come together to legislate a thoughtful solution to require additional disclosures. And this has been quoted a lot by Members here. And so I am wondering, will—he goes on to say that we ought to improve our ethics laws. Are there any ethics laws or any audits that will help us get to this unusual lending activity under Deutsche Bank that any of you on the panel can think of? Dr. Thorndike, Dr. Yin, Mr. Bookbinder.

If we want to look at the business transactions, the line, line—did you say line 40 on the 1040, that is going to give us the information that we need regarding these business partnerships, relationships, and loans.

Yes, sir.

Mr. YIN. Just a quick comment. I think that tax return information may provide useful leads for additional inquiries along the lines that you are describing. I am not suggesting that the tax return information in and of itself would find some smoking gun that

would satisfy your inquiry. But there may well be useful leads that you could pick up from the tax return information that, with additional inquiries——

Ms. MOORE. Do you think IRS audits would give us that lead, or voluntary disclosures of just the front page of the 1040 versus the attachments?

Mr. YIN. No. I am sorry, Congresswoman Moore. I am talking about if the Committee were to seek information, they would then have whatever return information that they sought. And from that information, that there may well be helpful leads along the lines of your inquiry.

Ms. MOORE. Do any of you—Mr. Bookbinder, the distinguished Ranking Member said that we ought to strengthen our ethic laws. What ethic laws is he referring to that we could strengthen in order to clear up this mystery about Deutsche Bank's relationship with Trump and the Trump organizations? By the way, Trump Tower was supposed to be built by VTB, the subsidiary of Deutsche Bank. Can you just tell us what ethic laws we could strengthen that would give us this information versus these tax returns?

Mr. BOOKBINDER. Well, I do certainly think there is room to make the financial disclosure forms more rigorous than they currently are. I also think, especially with a President and a vice president where conflicts of interest are so important, you really need all the information you can get. And tax returns are going to provide more information on this kind of question than probably you would ever be able to get in a financial disclosure form that all government—all senior government officials have to fill out.

Ms. MOORE. And just reclaiming my last 10 seconds. You know, I just would appeal to my colleagues to not accuse us of lazy legislating to ask for these tax returns when we have such a conflicted President.

And with that, I yield back.

Chairman. LEWIS. The chair now recognizes for 5 minutes Mr. Boyle.

Mr. BOYLE. Thank you, Mr. Chairman and Mr. Ranking Member, and I thank the witnesses.

Under the Constitution and our system of checks and balances, Congress has not just the right, but the responsibility to oversee whether our laws are faithfully executed by the executive branch. In accordance with this duty, almost a century ago, Congress explicitly enumerated this Committee's right to review any return or return information in the aftermath of two crises of public trust; two scandals, incidentally, which have remarkable parallels to the present day and this President.

One was the Teapot Dome scandal where senior officials in the Harding Administration granted public oil field leases in exchange for bribes. And the other involved, as was previously referenced, Treasury Secretary Andrew Mellon, who continued to own many business interests while serving in government. Sounds familiar. Some believe the Bureau of Internal Revenue, as it was then called, gave him and his businesses preferential treatment.

So, again, the parallels between the scandals of a century ago that gave birth to this 1924 law and the present day are really remarkable. For example, President Trump maintains a sprawling

business empire, which he refuses to transfer to a blind trust. According to multiple published reports, the President, through his businesses, derives income from foreign governments and their lobbyists, which also may violate the Constitution's prohibition against emoluments.

The President reportedly intervened personally to block the FBI from moving its headquarters, and thus, opening up for commercial development a site just a few blocks from his downtown Washington hotel. The President reportedly paid little or no tax for many years, in part because of aggressive tax planning and in part, perhaps, tax evasion.

Finally, his foundation and inaugural committee are currently under criminal investigation.

So I would open it up really to any one of you to comment on what I have had to say about the historical precedent that gave birth to this important law and the current facts as we know them. Professor Yin and then Mr. Rosenthal.

Mr. YIN. I would just say briefly that I completely agree with your point of the parallels of what happened almost 100 years ago that caused this law to be developed and the current time. I think the parallels really are very close.

Mr. ROSENTHAL. Congressman, I would just add that the use of 6103(f) authority is use designed to further a legislative purpose, the checks and balance of our constitutional system. I do not believe the use by this Committee to try to reaudit the President is what this Committee would be pursuing. Of course, it is your purposes and goals that would need to be achieved. However, the conflicts that we are discussing, the conflicts with respect to the execution of the Office of the President, the conflicts with respect to whether audits are being run correctly, the conflicts with respect to whether or not the President is running the country for his benefit or for ours, those are all conflicts that are within the purview of the legislative branch to determine with respect to the executive branch.

Remember, in my view, the legislative branch oversees the executive branch, not the other way around, and we have one President who runs it.

Mr. BOYLE. Well, it is not just your view, it is also explicit in the United States Constitution, so I obviously agree.

Mr. KIES. Can I——

Mr. BOYLE. One final kind of specific in-the-weeds point on this. The distinction between personal returns and business returns. In your view, would also looking at the business returns be necessary in order to address some of the questions that we have?

Mr. ROSENTHAL. So, yes. Let me quote the current IRS commissioner who during the campaign said: To fully understand the financial status of Trump, one would need to see his returns from multiple years, the work papers for the individual returns, and the returns for numerous related entities.

If you look to the President's own lawyers who wrote a letter describing whether his tax returns reflected Russian entanglements, they said that, and they looked at the 500, business entities that were listed on President Trump's financials and are linked and the income flows through to his returns, I don't think there is any

question, but if you want answer some of the questions that have been raised at this hearing, you would have to have business returns.

Mr. BOYLE. Thank you. I am out of time. I yield back.

Chairman. LEWIS. Thank you so much. I thank all of the Members for your participation.

The chair now recognizes for 5 minutes Mr. Arrington.

Mr. ARRINGTON. Thank you, Mr. Chairman. And Mr. Kies—and thank you, witnesses.

Mr. Kies, you look like you might want to comment on that last question and dialogue.

Mr. KIES. Well, the only comment I was going to point out is that there clearly are ways in which the financial disclosure rules could be modified to make them much more useful and much more informative without getting tax returns. But this issue of whether or not the current statute is a consequence of what happened back in the 1920s I think is misguided. It is more a function of what happened in the 1970s. In fact, when Congress rewrote Section 6103 in 1976, it was because they were concerned that Richard Nixon and his White House were handing out tax return information all over the place. And that is why Congress, this Committee, wrote as tight a provision as Section 6103 as it exists today.

And contrary to what my friend George Yin suggested as my misunderstanding, I don't have a misunderstanding of the statute. I encourage all the Members of the Committee to actually read the statute. It is unequivocal in terms of what it says.

Mr. ARRINGTON. Are you trying to tell me that in the 1970s, there were actually petty, self-serving, politically motivated people in this line of business?

Mr. KIES. It is hard to believe, but yes. That is correct.

Mr. ARRINGTON. And that is why we tightened up the restrictions, so that we wouldn't open up people's tax returns to political abuse of power?

Mr. KIES. The difference between the 1976 rules, which is basically what we have today, versus pre-1976 was fundamental. It referred to tax returns prior to 1976 as public property, public information. The 1976 act, which basically is what we have today, tightened those rules down immeasurably, and it is reflected in 6103(a), which is the only provision of Section 6103 that contains a substantive penalty for failure to comply with it. The rest of 6103 is a bunch of procedural rules.

And with all due respect to my friend George Yin, he is looking at 1920s legislative history to try and inform us as to what this provision means today. I strongly encourage every Member of the Committee to actually read the statute.

Mr. ARRINGTON. Mr. Kies, I am surprised that with a panel of experts, tax experts, experts on this issue, that when asked if they believed that the IRS was fulfilling its duty to execute on mandatory annual audits for the President, that there was great uncertainty. It seems like we have a very distrustful panel, but I would give them the opportunity again if they believe in fact that those mandatory audits are going on.

But before that, if they are going on—and I am going to assume that the IRS is doing its job in auditing this President—would the

issues like effective tax rates and whether the President is paying his taxes or if he is evading them or sources of income loss and deduction, those things that Mr. Rosenthal mentioned, would those not be discovered in an audit? If there were problems with that, would those not be flags, red flags that would come up in such an audit? Yes or no.

Mr. KIES. Certainly, all of those things would be information which the IRS could get. And I guess I would say in response to the issue of whether or not people believe that the President and vice president are being adequately audited, I will say, for me personally, and I would speak for everybody in this room, I don't think you want to have done to you what probably is being done in the form of the audits to the President and vice president. I suspect they are pretty intense.

Mr. ARRINGTON. So nobody up here is against improving transparency and identifying information where it would present a better picture of potential conflict of interest? I think of financial disclosure forms, ethics forms, there are plenty of other ways that we can do this without opening up such abuse that occurred in the 1970s. Abuses which then transpired into more restrictions to prevent that abuse of power.

Mr. Rosenthal, do you have confidence in the American people's judgment when it comes to this issue of disclosure of people's tax returns, the President's in particular?

Mr. ROSENTHAL. Well, I have seen polls——

Mr. ARRINGTON. Do you trust the judgment on this issue?

Mr. ROSENTHAL. I have seen polls that more than 60 percent of the American public believe the President should, you know, disclose his tax returns. Those have been almost constant since the campaign.

Mr. ARRINGTON. Mr. Rosenthal, did you see the election results? Because this was an issue during the Presidential election. If I recall, this was an issue in the primary, it was an issue in the general when candidate Hillary Clinton disclosed her tax returns. So the American people were well aware of this. And I have got a whole lot more confidence in the American people than they have in this body to conduct themselves in an objective and fair manner when it comes to these sorts of issues.

I am very concerned with giving this body politic more power to abuse, not only this President, but potentially the American people.

Mr. Chairman, I yield back.

Mr. ROSENTHAL. I would just say I don't know what to make as a matter of policy from the election. The American people may have expected the legislative branch to continue to oversee vigorously the executive branch and may have expected further oversight.

Chairman. LEWIS. Thank you very much.

The chair now recognizes for 5 minutes Mr. Gomez.

Mr. GOMEZ. Mr. Chairman, thank you so much. Thank you for having this important hearing.

I find it interesting on a couple of things. First, on the question of is it required by law. It is not required by law that a Presidential candidate submit their taxes, to reveal them. But as a matter of custom and practice, that is what has been done since the

early 1970s. And it is oftentimes somebody who comes along and rips apart that custom that then the body politics, the legislative branch or the public itself has to take action to codify that custom and practice. We do that all the time here in the House where there was unwritten rules, our custom and practice and then somebody breaks them, and then the House takes action to codify those. This is just another example of taking that step, as part of H.R. 1 to take that step to require all Presidential candidates and vice president candidates to reveal their tax returns.

You had a good historical point where I was actually thinking the same thing regarding the two term. A lot of things over time in our history of government were custom and practice and somebody came along and broke it, and then we passed a law to fix it. So on that issue, let's set that one aside.

On the issue of excuses. First, the President when he was a candidate said his tax returns were under audit, he couldn't return them. Now, the gentlemen on the other side of the aisle are saying that it is under investigation by the special counsel. Sooner or later, I am going to hear that a dog has eaten his tax returns, and I don't know even if this President has a dog. So we hear one excuse after excuse. And our responsibility is to see if there is a reason to go after, a legitimate reason.

Mr.—just to kind of clarify some of the rule and authority of this Committee. Mr. Yin, you mentioned—there was a discussion on post-1976 rule. What facts give you the understanding that we do have that authority and we continue to still have that authority today?

Mr. YIN. Thank you, Congressman Gomez. I completely agree that the 1976 act was designed to strengthen taxpayer privacy. That was the overriding goal, without any question. But it should be noted that in 1976, Congress specifically took away the ability of nontax committees to submit information to the House or the Senate and to have a public release of it. They amended the statute to say that any submission could only take place while the full House and the full Senate are sitting in closed executive session.

Importantly, even though they obviously had the ability to put the same condition on the tax committee submission, they did not. And my reading of that is that Congress wanted to keep at least one vehicle open to preserve its informing function relative to tax return information. If it had imposed the same restriction on the tax committees, then, in effect, Congress would have said nobody ever has an opportunity to inform the public if it relates to tax return information. And I find that result completely inconceivable.

And so I believe that the history of this provision, which was unchanged in 1976 relating to the tax committees, prevails in explaining exactly what the authority of the Committee is.

Mr. GOMEZ. And just to reiterate, to really kind of focus in, why is Congress so committed to retaining that authority?

Mr. YIN. Well, I think Congressman Boyle said it very correctly, which is that one of the principles, if not the most important responsibility of Congress, is to make sure that the laws are being faithfully executed by the agencies and by the high-ranking officials—that serve the country. And so it is important then to have the ability to inquire about whether those laws are being faithfully

executed, and to the extent that Congress were to find that there has been a violation, it certainly is the congressional responsibility to inform the public of that. That seems like a very foundational responsibility of Congress.

Mr. GOMEZ. That is the basis of our government, right? Checks and balances. And without that ability to do that, then we don't have a check on the executive branch.

Mr. YIN. Exactly right.

Mr. GOMEZ. I yield back.

Chairman. LEWIS. The chair is pleased to recognize Mr. Pascrell for 5 minutes. And I apologize for passing you over.

Mr. PASCRELL. No problem, Mr. Chairman.

Mr. Chairman, I want to enter into the record the articles How a Simple Tax Rule Let Donald Trump Turn $916 Million Loss Into a Plus; second, Trump Engaged in Suspect Tax Schemes as He Reaped Riches From His Father; number three, Trump Foundation Will Dissolve, Accused of "Shocking Pattern of Illegality." I didn't mention those articles, now I mention those articles. Put them in the record. My request. Thank you.

The New York Times

How a Simple Tax Rule Let Donald Trump Turn a $916 Million Loss Into a Plus

By Nicholas Confessore and Binyamin Appelbaum

Oct. 3, 2016

It is among the least controversial parts of the federal tax code, almost as old as the income tax itself: A business, big or small, can escape taxation if it lost money in a previous year, a rule that helps businesses weather tough economic times, and hopefully thrive again.

But in the early 1990s, as his overleveraged and indebted properties faltered and he teetered on the edge of personal bankruptcy, Donald J. Trump sought to take this ordinary provision to an enormous scale and escape a foundering business — and avoid taxes for years going forward.

In 1995, according to documents published on Saturday by The New York Times, Mr. Trump claimed almost a billion dollars in operating losses that could be used to avoid future federal income taxation. The eye-popping figure would amount to almost 2 percent of all so-called net operating losses claimed by all American taxpayers that year.

The maneuver would have protected him for up to 18 years' worth of income taxes, easing his path to his new career: leveraging his name and knack for publicity while minimizing the risks to his fortune. Trump-branded apartment buildings, golf courses, men's wear and steaks were followed by his lucrative hit reality television series.

"I was able to use the tax laws in this country and my business acumen to dig out of the real estate mess," Mr. Trump said on Monday in a campaign

appearance in Colorado. "Few others were able to do what I did."

Because he has broken with decades of American political tradition and steadfastly refused to release any full personal income tax returns, much about what Mr. Trump did remains unclear. But the disclosure of his 1995 tax maneuver has led to a rare moment in which the arcana of tax policy turned into a national political issue.

And much like the admission by Mitt Romney in 2012 that he had paid an effective income tax rate of less than 14 percent in some years while amassing a $250 million fortune, the disclosure of Mr. Trump's ambitious tax maneuver was seized on by Democrats as an illustration of the huge advantages tax rules can bestow on the wealthy.

More than 500,000 individual taxpayers took advantage of the same tax rule as Mr. Trump in 1995, according to the Internal Revenue Service. The average loss they claimed, however, was just $97,600. Mr. Trump's $916 million loss accounted for almost 2 percent of the national total.

"He likes to say he does things in a big way, but I doubt he would boast about having what was likely the biggest net operating loss in the economy," said Lily Batchelder, a law and public policy professor at New York University.

The rule that let Mr. Trump shelter almost $1 billion in income from taxation dates to 1918. It was enacted to prevent businesses from being penalized by the administrative convenience of calendar-year taxation: If a company loses $100,000 one year, and makes $100,000 the following year, the law allows the company to pay nothing in taxes, as it has only broken even.

There is nothing unusual about business losses appearing on a personal tax return. Most American businesses are organized as "pass-throughs," rather than corporations, meaning their profits are passed through to their owners, and taxed as personal income. Losses are passed through, too.

"It's good policy," said Alan Cole, an economist at the conservative Tax Foundation. "This is just the astounding edge case that has everyone's eyes bulging as they look at that number."

But the rule also reflects an inequity in how income earned through labor is taxed compared with income earned through capital. Mere wage earners cannot avail themselves of the provision Mr. Trump and other business owners use to avoid taxes.

"As individuals, we generally don't get this," said David Herzig, a tax law professor at Valparaiso University School of Law in Indiana. "If you experience a loss in one year, you don't get to carry it forward or carry it back."

Ms. Batchelder said that it would be a boon to working families if they could carry over their deductions or spread out their taxable incomes over many years the way businesses do with their operating losses. "Virtually every taxpayer would be better off if they were able to pay tax on their average income rather than their income in a given year," said Ms. Batchelder, who was deputy director of the White House National Economic Council under President Obama.

It remains unclear exactly how Mr. Trump lost such a huge sum. But the rough outline of his business decline is well established. By the early 1990s, Mr. Trump had amassed hundreds of millions of dollars in personal financial liability and had lost money on casinos, his Plaza Hotel property in Manhattan and his airline, though precisely how he reflected those losses on his taxes is not known.

But the federal government has made it particularly easy for real estate investors to avoid taxes. Investors, for example, can walk away from a property and record the investment as a loss — even if they were playing with borrowed money. While a profit from that same property would be treated as a capital gain, losses are treated as "operating losses" under a tax code provision that

dates back to the Great Depression. Those losses can be deployed far more flexibly than capital losses to shield other income from taxation.

"He was forced to sell many of his investments in the early 1990s, at pennies on the dollar, teetering on bankruptcy," Edward Kleinbard, a tax expert at the University of Southern California, said of Mr. Trump. "There were real economic losses from those investments — borne entirely by the lenders. Yet nonetheless he was able to emerge with a large net operating loss to carry forward, attributable primarily to losing other people's money."

Mr. Trump has defended his tax maneuvers over the years not only as legal and appropriate, but as proof of his business acumen. But whether the government agreed with that assessment is an open question. A letter to Mr. Trump from his lawyers, which the campaign released in March, indicated that the government may have examined those claims, several tax lawyers said.

The letter said that an audit of Mr. Trump's tax returns for 2002 through 2008 was "closed administratively by agreement with the I.R.S. without assessment or payment, on a net basis, of any deficiency." That language suggests, the experts said, that the government may have reduced what Mr. Trump was able to claim as a loss without requiring him to pay any additional taxes.

The revelation that Mr. Trump could have avoided paying federal income taxes for 18 years is likely to thrust into the spotlight a tax provision that has received little attention from Congress for decades. Members of both parties have argued in recent years for new limits on the use of past losses to offset profits. Democrats have called for reducing the number of years such a shield can be used.

House Republicans have proposed a change that would prevent taxpayers from using past losses to avoid income taxes entirely.

Mr. Trump did not include that proposal in his own tax plan. He did propose a

large tax cut for businesses, including real estate investment firms, although Mr. Trump has not clarified the size of those cuts. His campaign continues to publicize competing versions of the plan.

Alan Rappeport contributed reporting.

A version of this article appears in print on Oct. 4, 2016, on Page A16 of the New York edition with the headline: How a Simple Tax Rule Helped Trump Turn a Huge Loss Into a Plus

The New York Times

Trump Foundation Will Dissolve, Accused of 'Shocking Pattern of Illegality'

By Shane Goldmacher

Dec. 18, 2018

[What you need to know to start the day: Get New York Today in your inbox.*]*

The Donald J. Trump Foundation, once billed as the charitable arm of the president's financial empire, agreed to dissolve on Tuesday and give away all its remaining assets under court supervision as part of an ongoing investigation and lawsuit by the New York attorney general.

The foundation was accused by the attorney general, Barbara Underwood, of "functioning as little more than a checkbook to serve Mr. Trump's business and political interests," and of engaging in "a shocking pattern of illegality" that included unlawfully coordinating with Mr. Trump's 2016 presidential campaign.

In addition to shuttering the charity, her office has pursued a lawsuit that could bar President Trump and his three oldest children from the boards of other New York charities, as well as force the payment of millions in restitution and penalties.

"This is an important victory for the rule of law, making clear that there is one set of rules for everyone," Ms. Underwood said in announcing the agreement.

The closure of the foundation is a milestone in what has been a two-year investigation after the nonprofit's management and giving patterns emerged as a flash point in the 2016 campaign. What assets remain after penalties will be directed to charities that must be approved by the attorney general's office, and the process will be subject to judicial supervision.

Ms. Underwood and a lawyer for the Trump foundation signed the stipulation agreeing to the dissolution.

"We'll continue to move our suit forward," Ms. Underwood said, "to ensure that the Trump Foundation and its directors are held to account for their clear and repeated violations of state and federal law."

Nonprofit foundations are supposed to be devoted to charitable activities. But the attorney general's office has charged that the Trump Foundation was used to win political favor, accusing the foundation of virtually becoming an arm of the Trump campaign, with its campaign manager, Corey Lewandowski, directing the foundation to make disbursements in Iowa only days before the state held its presidential nominating caucuses.

"Is there any way we can make some disbursements [from the proceeds of the fund-raiser] this week while in Iowa? Specifically on Saturday," Mr. Lewandowski wrote to the foundation's treasurer in an email disclosed in the lawsuit.

Mr. Trump was required to sign annual filings with the Internal Revenue Service in which he attested that the foundation did not engage in political activity.

The president had said after the 2016 election that to avoid any appearance of conflict of interest, he would dissolve the foundation. But the attorney general's office blocked him from doing so amid concerns about the handling of the foundation's documents and assets.

Sarah Huckabee Sanders, the White House press secretary, refused to comment on the dissolution of the Trump Foundation, saying, "That's something that I would refer you to the Trump Organization."

Mr. Trump has long claimed that all the foundation's money went to "wonderful

charities" that had legitimate purposes. Alan S. Futerfas, a lawyer for the foundation, accused Ms. Underwood of making a "misleading statement" on Tuesday in "a further attempt to politicize this matter."

"The foundation has been seeking to dissolve and distribute its remaining assets to worthwhile charitable causes since Donald J. Trump's victory in the 2016 presidential election," he said. "Unfortunately, the N.Y.A.G. sought to prevent dissolution for almost two years, thereby depriving those most in need of nearly $1.7 million."

Amy Spitalnick, a spokeswoman for Ms. Underwood, said the Trump foundation had previously wanted to dissolve without any oversight. "That was unacceptable," she said.

The investigation of the foundation was begun by the former attorney general, Eric T. Schneiderman, a Democrat who was an antagonist of Mr. Trump before stepping down following revelations of sexual misconduct this year.

Next month, the ongoing case will fall to the incoming attorney general, Letitia James, a vocal critic of Mr. Trump who said recently that she would "use every area of the law to investigate President Trump and his business transactions and that of his family."

Ms. Underwood's office sued the Trump Foundation in June, charging it with "improper and extensive political activity, repeated and willful self-dealing transactions, and failure to follow basic fiduciary obligations or to implement even elementary corporate formalities required by law."

[Want to know more about the Trump Foundation? Read this explainer.]

Charities are barred from advancing the self-interests of its executives over the charity's mission, but the attorney general's office said in a court filing this year that the foundation had entered into a number of "prohibited self-dealing

transactions that directly benefited Mr. Trump or entities that he controlled."

The Trump Foundation, for instance, purchased a $10,000 portrait of Mr. Trump that was displayed at one of his golf clubs. The existence of the portrait, along with other examples of questionable spending cited in the lawsuit, was first reported by The Washington Post.

One transaction was revealed by a note in Mr. Trump's handwriting that said $100,000 of Trump Foundation money should be directed to another charity to settle a legal dispute between the Town of Palm Beach and Mr. Trump's Mar-a-Lago resort.

Mr. Trump was once a major donor to his own foundation. But in the six years before his presidential run, from 2009 to 2014, Mr. Trump stopped giving his own money, relying instead solely on outside donations.

The attorney general's office is seeking for the Trump Foundation to pay $2.8 million in restitution, which is the amount raised for the foundation at an Iowa fund-raiser in 2016 that Mr. Trump held on the day that he avoided attending a debate with his Republican rivals. The foundation reported $1.7 million in assets in 2017 to the I.R.S.

Last month, a New York state judge ruled that the lawsuit could proceed, even as Mr. Trump's lawyers had argued that the court did not have jurisdiction over Mr. Trump, as president, and that the statute of limitations had passed on some of the issues.

"I find I have jurisdiction over Mr. Trump," Justice Saliann Scarpulla wrote in a 27-page ruling.

Mr. Futerfas had said in a statement then that "all of the money raised by the Foundation went to charitable causes" and that "we remain confident in the ultimate outcome of these proceedings."

"I won't settle this case!" Mr. Trump posted on Twitter in June, accusing "the sleazy New York Democrats" of targeting him.

The foundation lawsuit follows years of scrutiny of President Trump's charitable activities and adds to his extensive legal challenges, amid a continuing investigation by special counsel Robert S. Mueller III.

The Trump Foundation is hardly the first charity dissolved by the state — Mr. Schneiderman previously shut down a sham breast cancer charity, for example — but it is the first involving a sitting president of the United States.

Also, if the attorney general's office is successful in barring Mr. Trump from serving on foundation boards for a decade, it would put him in the unusual position of not being able to serve on the board of his own post-presidential foundation, should it be set up in New York.

Correction: *Dec. 18, 2018*
An earlier version of this article misspelled the surname of a spokeswoman for the New York attorney general. She is Amy Spitalnick, not Spitalnik.

Danny Hakim contributed reporting.

A version of this article appears in print on Dec. 19, 2018, on Page A1 of the New York edition with the headline: Trump Charity Agrees to End Amid Lawsuit

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SPECIAL INVESTIGATION

Trump Engaged in Suspect Tax Schemes as He Reaped Riches From His

The president has long sold himself as a self-made billionaire, but a Times investigation found that he received at least $413 million in today's dollars from his father's real estate empire, much of it through tax dodges in the 1990s.

By DAVID BARSTOW, SUSANNE CRAIG and RUSS BUETTNER
Oct. 2, 2018

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President Trump participated in dubious tax schemes during the 1990s, including instances of outright fraud, that greatly increased the fortune he received from his parents, an investigation by The New York Times has found.

Mr. Trump won the presidency proclaiming himself a self-made billionaire, and he has long insisted that his father, the legendary New York City builder Fred C. Trump, provided almost no financial help.

But The Times's investigation, based on a vast trove of confidential tax returns and financial records, reveals that Mr. Trump received the equivalent today of at least $413 million from his father's real estate empire, starting when he was a toddler and continuing to this day.

Much of this money came to Mr. Trump because he helped his parents dodge taxes. He and his siblings set up a sham corporation to disguise millions of dollars in gifts from their parents, records and interviews show. Records indicate that Mr. Trump helped his father take improper tax deductions worth millions more. He also helped formulate a strategy to undervalue his parents' real estate holdings by hundreds of millions of dollars on tax returns, sharply reducing the tax bill when those properties

were transferred to him and his siblings.

These maneuvers met with little resistance from the Internal Revenue Service, The Times found. The president's parents, Fred and Mary Trump, transferred well over $1 billion in wealth to their children, which could have produced a tax bill of at least $550 million under the 55 percent tax rate then imposed on gifts and inheritances.

The Trumps paid a total of $52.2 million, or about 5 percent, tax records show.

The president declined repeated requests over several weeks to comment for this article. But a lawyer for Mr. Trump, Charles J. Harder, provided a written statement on Monday, one day after The Times sent a detailed description of its findings. "The New York Times's allegations of fraud and tax evasion are 100 percent false, and highly defamatory," Mr. Harder said. "There was no fraud or tax evasion by anyone. The facts upon which The Times bases its false allegations are extremely inaccurate."

Mr. Harder sought to distance Mr. Trump from the tax strategies used by his family, saying the president had delegated those tasks to relatives and tax professionals. "President Trump had virtually no involvement whatsoever with these matters," he said. "The affairs were handled by other Trump family members who were not experts themselves and therefore relied entirely upon the aforementioned licensed professionals to ensure full compliance with the law."

[Read the full statement]

The president's brother, Robert Trump, issued a statement on behalf of the Trump family:

"Our dear father, Fred C. Trump, passed away in June 1999. Our beloved mother, Mary Anne Trump, passed away in August 2000. All appropriate gift and estate tax returns were filed, and the required taxes were paid. Our father's estate was closed in 2001 by both the Internal Revenue Service and the New York State tax authorities, and our mother's estate was closed in 2004. Our family has no other comment on these matters that happened some 20 years ago, and would appreciate your respecting the privacy of our

deceased parents, may God rest their souls."

The Times's findings raise new questions about Mr. Trump's refusal to release his income tax returns, breaking with decades of practice by past presidents. According to tax experts, it is unlikely that Mr. Trump would be vulnerable to criminal prosecution for helping his parents evade taxes, because the acts happened too long ago and are past the statute of limitations. There is no time limit, however, on civil fines for tax fraud.

The findings are based on interviews with Fred Trump's former employees and advisers and more than 100,000 pages of documents describing the inner workings and immense profitability of his empire. They include documents culled from public sources — mortgages and deeds, probate records, financial disclosure reports, regulatory records and civil court files.

The investigation also draws on tens of thousands of pages of confidential records — bank statements, financial audits, accounting ledgers, cash disbursement reports, invoices and canceled checks. Most notably, the documents include more than 200 tax returns from Fred Trump, his companies and various Trump partnerships and trusts. While the records do not include the president's personal tax returns and reveal little about his recent business dealings at home and abroad, dozens of corporate, partnership and trust tax returns offer the first public accounting of the income he received for decades from various family enterprises.

[11 takeaways from The Times's investigation]

What emerges from this body of evidence is a financial biography of the 45th president fundamentally at odds with the story Mr. Trump has sold in his books, his TV shows and his political life. In Mr. Trump's version of how he got rich, he was the master dealmaker who broke free of his father's "tiny" outer-borough operation and parlayed a single $1 million loan from his father ("I had to pay him back with interest!") into a $10 billion empire that would slap the Trump name on hotels, high-rises, casinos, airlines and golf courses the world over. In Mr. Trump's version, it was always his guts and gumption that overcame setbacks. Fred Trump was simply a cheerleader.

"I built what I built myself," Mr. Trump has said, a narrative that was long

amplified by often-credulous coverage from news organizations, including The Times.

Certainly a handful of journalists and biographers, notably Wayne Barrett, Gwenda Blair, David Cay Johnston and Timothy L. O'Brien, have challenged this story, especially the claim of being worth $10 billion. They described how Mr. Trump piggybacked off his father's banking connections to gain a foothold in Manhattan real estate. They poked holes in his go-to talking point about the $1 million loan, citing evidence that he actually got $14 million. They told how Fred Trump once helped his son make a bond payment on an Atlantic City casino by buying $3.5 million in casino chips.

But The Times's investigation of the Trump family's finances is unprecedented in scope and precision, offering the first comprehensive look at the inherited fortune and tax dodges that guaranteed Donald J. Trump a gilded life. The reporting makes clear that in every era of Mr. Trump's life, his finances were deeply intertwined with, and dependent on, his father's wealth.

By age 3, Mr. Trump was earning $200,000 a year in today's dollars from his father's empire. He was a millionaire by age 8. By the time he was 17, his father had given him part ownership of a 52-unit apartment building. Soon after Mr. Trump graduated from college, he was receiving the equivalent of $1 million a year from his father. The money increased with the years, to more than $5 million annually in his 40s and 50s.

Fred Trump's real estate empire was not just scores of apartment buildings. It was also a mountain of cash, tens of millions of dollars in profits building up inside his businesses, banking records show. In one six-year span, from 1988 through 1993, Fred Trump reported $109.7 million in total income, now equivalent to $210.7 million. It was not unusual for tens of millions in Treasury bills and certificates of deposit to flow through his personal bank accounts each month.

Fred Trump was relentless and creative in finding ways to channel this wealth to his children. He made Donald not just his salaried employee but also his property manager, landlord, banker and consultant. He gave him loan after loan, many never repaid. He provided money for his car, money for his employees, money to buy stocks, money for his first Manhattan

offices and money to renovate those offices. He gave him three trust funds. He gave him shares in multiple partnerships. He gave him $10,000 Christmas checks. He gave him laundry revenue from his buildings.

Much of his giving was structured to sidestep gift and inheritance taxes using methods tax experts described to The Times as improper or possibly illegal. Although Fred Trump became wealthy with help from federal housing subsidies, he insisted that it was manifestly unfair for the government to tax his fortune as it passed to his children. When he was in his 80s and beginning to slide into dementia, evading gift and estate taxes became a family affair, with Donald Trump playing a crucial role, interviews and newly obtained documents show.

The line between legal tax avoidance and illegal tax evasion is often murky, and it is constantly being stretched by inventive tax lawyers. There is no shortage of clever tax avoidance tricks that have been blessed by either the courts or the I.R.S. itself. The richest Americans almost never pay anything close to full freight. But tax experts briefed on The Times's findings said the Trumps appeared to have done more than exploit legal loopholes. They said the conduct described here represented a pattern of deception and obfuscation, particularly about the value of Fred Trump's real estate, that repeatedly prevented the I.R.S. from taxing large transfers of wealth to his children.

"The theme I see here through all of this is valuations: They play around with valuations in extreme ways," said Lee-Ford Tritt, a University of Florida law professor and a leading expert in gift and estate tax law. "There are dramatic fluctuations depending on their purpose."

The manipulation of values to evade taxes was central to one of the most important financial events in Donald Trump's life. In an episode never before revealed, Mr. Trump and his siblings gained ownership of most of their father's empire on Nov. 22, 1997, a year and a half before Fred Trump's death. Critical to the complex transaction was the value put on the real estate. The lower its value, the lower the gift taxes. The Trumps dodged hundreds of millions in gift taxes by submitting tax returns that grossly undervalued the properties, claiming they were worth just $41.4 million.

The same set of buildings would be sold off over the next decade for more

than 16 times that amount.

The most overt fraud was All County Building Supply & Maintenance, a company formed by the Trump family in 1992. All County's ostensible purpose was to be the purchasing agent for Fred Trump's buildings, buying everything from boilers to cleaning supplies. It did no such thing, records and interviews show. Instead All County siphoned millions of dollars from Fred Trump's empire by simply marking up purchases already made by his employees. Those millions, effectively untaxed gifts, then flowed to All County's owners — Donald Trump, his siblings and a cousin. Fred Trump then used the padded All County receipts to justify bigger rent increases for thousands of tenants.

After this article was published on Tuesday, a spokesman for the New York State Department of Taxation and Finance said the agency was "reviewing the allegations" and "vigorously pursuing all appropriate areas of investigation."

All told, The Times documented 295 streams of revenue that Fred Trump created over five decades to enrich his son. In most cases his four other children benefited equally. But over time, as Donald Trump careened from one financial disaster to the next, his father found ways to give him substantially more money, records show. Even so, in 1990, according to previously secret depositions, Mr. Trump tried to have his father's will rewritten in a way that Fred Trump, alarmed and angered, feared could result in his empire's being used to bail out his son's failing businesses.

Of course, the story of how Donald Trump got rich cannot be reduced to handouts from his father. Before he became president, his singular achievement was building the brand of Donald J. Trump, Self-Made Billionaire, a brand so potent it generated hundreds of millions of dollars in revenue through TV shows, books and licensing deals.

Constructing that image required more than Fred Trump's money. Just as important were his son's preternatural marketing skills and always-be-closing competitive hustle. While Fred Trump helped finance the accouterments of wealth, Donald Trump, master self-promoter, spun them into a seductive narrative. Fred Trump's money, for example, helped build Trump Tower, the talisman of privilege that established his son as a major

player in New York. But Donald Trump recognized and exploited the iconic power of Trump Tower as a primary stage for both "The Apprentice" and his presidential campaign.

The biggest payday he ever got from his father came long after Fred Trump's death. It happened quietly, without the usual Trumpian news conference, on May 4, 2004, when Mr. Trump and his siblings sold off the empire their father had spent 70 years assembling with the dream that it would never leave his family.

Donald Trump's cut: $177.3 million, or $236.2 million in today's dollars.

'ONE-MAN BUILDING SHOW'

Early experience, cultivated connections and a wave of federal housing subsidies helped Fred Trump lay the foundation of his son's wealth.

Before he turned 20, Fred Trump had already built and sold his first home. At age 35, he was building hundreds of houses a year in Brooklyn and Queens. By 45, he was building some of the biggest apartment complexes in the country.

Aside from an astonishing work ethic — "Sleeping is a waste of time," he liked to say — the growth reflected his shrewd application of mass-production techniques. The Brooklyn Daily Eagle called him "the Henry Ford of the home-building industry." He would erect scaffolding a city block long so his masons, sometimes working a second shift under floodlights, could throw up a dozen rowhouses in a week. They sold for about $115,000 in today's dollars.

By 1940, American Builder magazine was taking notice, devoting a spread to Fred Trump under the headline "Biggest One-Man Building Show." The article described a swaggering lone-wolf character who paid for everything — wages, supplies, land — from a thick wad of cash he carried at all times, and whose only help was a secretary answering the phone in an office

barely bigger than a parking space. "He is his own purchasing agent, cashier, paymaster, building superintendent, construction engineer and sales director," the article said.

It wasn't that simple. Fred Trump had also spent years ingratiating himself with Brooklyn's Democratic machine, giving money, doing favors and making the sort of friends (like Abraham D. Beame, a future mayor) who could make life easier for a developer. He had also assembled a phalanx of plugged-in real estate lawyers, property appraisers and tax accountants who protected his interests.

All these traits — deep experience, nimbleness, connections, a relentless focus on the efficient construction of homes for the middle class — positioned him perfectly to ride a growing wave of federal spending on housing. The wave took shape with the New Deal, grew during the World War II rush to build military housing and crested with the postwar imperative to provide homes for returning G.I.s. Fred Trump would become a millionaire many times over by making himself one of the nation's largest recipients of cheap government-backed building loans, according to Gwenda Blair's book "The Trumps: Three Generations of Builders and a President."

Those same loans became the wellspring of Donald Trump's wealth. In the late 1940s, Fred Trump obtained roughly $26 million in federal loans to build two of his largest developments, Beach Haven Apartments, near Coney Island, Brooklyn, and Shore Haven Apartments, a few miles away. Then he set about making his children his landlords.

As ground lease payments fattened his children's trusts, Fred Trump embarked on a far bigger transfer of wealth. Records obtained by The Times reveal how he began to build or buy apartment buildings in Brooklyn and Queens and then gradually, without public trace, transfer ownership to his children through a web of partnerships and corporations. In all, Fred Trump put up nearly $13 million in cash and mortgage debt to create a mini-empire within his empire — eight buildings with 1,032 apartments — that he would transfer to his children.

The handover began just before Donald Trump's 16th birthday. On June 1, 1962, Fred Trump transferred a plot of land in Queens to a newly created

corporation. While he would be its president, his children would be its owners, records show. Then he constructed a 52-unit building called Clyde Hall.

It was easy money for the Trump children. Their father took care of everything. He bought the land, built the apartments and obtained the mortgages. His employees managed the building. The profits, meanwhile, went to his children. By the early 1970s, Fred Trump would execute similar transfers of the other seven buildings.

For Donald Trump, this meant a rapidly growing new source of income. When he was in high school, his cut of the profits was about $17,000 a year in today's dollars. His share exceeded $300,000 a year soon after he graduated from college.

How Fred Trump transferred 1,032 apartments to his children without incurring hundreds of thousands of dollars in gift taxes is unclear. A review of property records for the eight buildings turned up no evidence that his children bought them outright. Financial records obtained by The Times reveal only that all of the shares in the partnerships and corporations set up to create the mini-empire shifted at some point from Fred Trump to his children. Yet his tax returns show he paid no gift taxes on seven of the buildings, and only a few thousand dollars on the eighth.

That building, Sunnyside Towers, a 158-unit property in Queens, illustrates Fred Trump's catch-me-if-you-can approach with the I.R.S., which had repeatedly cited him for underpaying taxes in the 1950s and 1960s.

Sunnyside was bought for $2.5 million in 1968 by Midland Associates, a partnership Fred Trump formed with his children for the transaction. In his 1969 tax return, he reported giving each child 15 percent of Midland Associates. Based on the amount of cash put up to buy Sunnyside, the value of this gift should have been $93,750. Instead, he declared a gift of only $6,516.

Donald Trump went to work for his father after graduating from the University of Pennsylvania in 1968. His father made him vice president of dozens of companies. This was also the moment Fred Trump telegraphed what had become painfully obvious to his family and employees: He did not

consider his eldest son, Fred Trump Jr., a viable heir apparent.

Fred Jr., seven and a half years older than Donald, had also worked for his father after college. It did not go well, relatives and former employees said in interviews. Fred Trump openly ridiculed him for being too nice, too soft, too lazy, too fond of drink. He frowned on his interests in flying and music, could not fathom why he cared so little for the family business. Donald, witness to his father's deepening disappointment, fashioned himself Fred Jr.'s opposite — the brash tough guy with a killer instinct. His reward was to inherit his father's dynastic dreams.

Fred Trump began taking steps that enriched Donald alone, introducing him to the charms of building with cheap government loans. In 1972, father and son formed a partnership to build a high-rise for the elderly in East Orange, N.J. Thanks to government subsidies, the partnership got a nearly interest-free $7.8 million loan that covered 90 percent of construction costs. Fred Trump paid the rest.

But his son received most of the financial benefits, records show. On top of profit distributions and consulting fees, Donald Trump was paid to manage the building, though Fred Trump's employees handled day-to-day management. He also pocketed what tenants paid to rent air-conditioners. By 1975, Donald Trump's take from the building was today's equivalent of nearly $305,000 a year.

Fred Trump also gave his son an extra boost through his investment, in the early 1970s, in the sprawling Starrett City development in Brooklyn, the largest federally subsidized housing project in the nation. The investment, which promised to generate huge tax write-offs, was tailor-made for Fred Trump; he would use Starrett City's losses to avoid taxes on profits from his empire.

Fred Trump invested $5 million. A separate partnership established for his children invested $1 million more, showering tax breaks on the Trump children for decades to come. They helped Donald Trump avoid paying any federal income taxes at all in 1978 and 1979. But Fred Trump also deputized him to sell a sliver of his Starrett City shares, a sweetheart deal

that generated today's equivalent of more than $1 million in "consulting fees."

The money from consulting and management fees, ground leases, the mini-empire and his salary all combined to make Donald Trump indisputably wealthy years before he sold his first Manhattan apartment. By 1975, when he was 29, he had collected nearly $9 million in today's dollars from his father, The Times found.

Wealthy, yes. But a far cry from the image father and son craved for Donald Trump.

THE SILENT PARTNER

Fred Trump would play a crucial role in building and carefully maintaining the myth of Donald J. Trump, Self-Made Billionaire.

"He is tall, lean and blond, with dazzling white teeth, and he looks ever so much like Robert Redford. He rides around town in a chauffeured silver Cadillac with his initials, DJT, on the plates. He dates slinky fashion models, belongs to the most elegant clubs and, at only 30 years of age, estimates that he is worth 'more than $200 million.'"

So began a Nov. 1, 1976, article in The Times, one of the first major profiles of Donald Trump and a cornerstone of decades of mythmaking about his wealth. How could he claim to be worth more than $200 million when, as he divulged years later to casino regulators, his 1976 taxable income was $24,594? Donald Trump simply appropriated his father's entire empire as his own.

In the chauffeured Cadillac, Donald Trump took The Times's reporter on a tour of what he called his "jobs." He told her about the Manhattan hotel he

planned to convert into a Grand Hyatt (his father guaranteed the construction loan), and the Hudson River railroad yards he planned to develop (the rights were purchased by his father's company). He showed her "our philanthropic endeavor," the high-rise for the elderly in East Orange (bankrolled by his father), and an apartment complex on Staten Island (owned by his father), and their "flagship," Trump Village, in Brooklyn (owned by his father), and finally Beach Haven Apartments (owned by his father). Even the Cadillac was leased by his father.

"So far," he boasted, "I've never made a bad deal."

It was a spectacular con, right down to the priceless moment when Mr. Trump confessed that he was "publicity shy." By claiming his father's wealth as his own, Donald Trump transformed his place in the world. A brash 30-year-old playboy worth more than $200 million proved irresistible to New York City's bankers, politicians and journalists.

Yet for all the spin about cutting his own path in Manhattan, Donald Trump was increasingly dependent on his father. Weeks after The Times's profile ran, Fred Trump set up still more trusts for his children, seeding each with today's equivalent of $4.3 million. Even into the early 1980s, when he was already proclaiming himself one of America's richest men, Donald Trump remained on his father's payroll, drawing an annual salary of $260,000 in today's dollars.

Meanwhile, Fred Trump and his companies also began extending large loans and lines of credit to Donald Trump. Those loans dwarfed what the other Trumps got, the flow so constant at times that it was as if Donald Trump had his own Money Store. Consider 1979, when he borrowed $1.5 million in January, $65,000 in February, $122,000 in March, $150,000 in April, $192,000 in May, $226,000 in June, $2.4 million in July and $40,000 in August, according to records filed with New Jersey casino regulators.

In theory, the money had to be repaid. In practice, records show, many of the loans were more like gifts. Some were interest-free and had no repayment schedule. Even when loans charged interest, Donald Trump frequently skipped payments.

This previously unreported flood of loans highlights a clear pattern to Fred Trump's largess. When Donald Trump began expensive new projects, his father increased his help. In the late 1970s, when Donald Trump was converting the old Commodore Hotel into a Grand Hyatt, his father stepped up with a spigot of loans. Fred Trump did the same with Trump Tower in the early 1980s.

In the mid-1980s, as Donald Trump made his first forays into Atlantic City, Fred Trump devised a plan that sharply increased the flow of money to his son.

The plan involved the mini-empire — the eight buildings Fred Trump had transferred to his children. He converted seven of them into cooperatives, and helped his children convert the eighth. That meant inviting tenants to buy their apartments, generating a three-way windfall for Donald Trump and his siblings: from selling units, from renting unsold units and from collecting mortgage payments.

In 1982, Donald Trump made today's equivalent of about $380,000 from the eight buildings. As the conversions continued and Fred Trump's employees sold off more units, his son's share of profits jumped, records show. By 1987, with the conversions completed, his son was making today's equivalent of $4.5 million a year off the eight buildings.

Fred Trump made one other structural change to his empire that produced a big new source of revenue for Donald Trump and his siblings. He made them his bankers.

The Times could find no evidence that the Trump children had to come up with money of their own to buy their father's mortgages. Most were purchased from Fred Trump's banks by trusts and partnerships that he set up and seeded with money.

Co-op sales, mortgage payments, ground leases — Fred Trump was a master at finding ways to enrich his children in general and Donald Trump in particular. Some ways were like slow-moving creeks. Others were rushing streams. A few were geysers. But as the decades passed they all joined into one mighty river of money. By 1990, The Times found, Fred Trump, the ultimate silent partner, had quietly transferred today's

equivalent of at least $46.2 million to his son.

Donald Trump took on a mien of invincibility. The stock market crashed in 1987 and the economy cratered. But he doubled down thanks in part to Fred Trump's banks, which eagerly extended credit to the young Trump princeling. He bought the Plaza Hotel in 1988 for $407.5 million. He bought the Eastern Airlines shuttle fleet in 1989 for $365 million and called it Trump Shuttle. His newest casino, the Trump Taj Mahal, would need at least $1 million a day just to cover its debt.

The skeptics who questioned the wisdom of this debt-fueled spending spree were drowned out by one magazine cover after another marveling at someone so young taking such breathtaking risks. But whatever Donald Trump was gambling, not for one second was he at risk of losing out on a lifetime of frictionless, effortless wealth. Fred Trump had that bet covered.

THE SAFETY NET DEPLOYS

Bailouts, collateral, cash on hand — Fred Trump was prepared, and was not about to let bad bets sink his son.

As the 1980s ended, Donald Trump's big bets began to go bust. Trump Shuttle was failing to make loan payments within 15 months. The Plaza, drowning in debt, was bankrupt in four years. His Atlantic City casinos, also drowning in debt, tumbled one by one into bankruptcy.

What didn't fail was the Trump safety net. Just as Donald Trump's finances were crumbling, family partnerships and companies dramatically increased distributions to him and his siblings. Between 1989 and 1992, tax records show, four entities created by Fred Trump to support his children paid Donald Trump today's equivalent of $8.3 million.

Fred Trump's generosity also provided a crucial backstop when his son

pleaded with bankers in 1990 for an emergency line of credit. With so many of his projects losing money, Donald Trump had few viable assets of his own making to pledge as collateral. What has never been publicly known is that he used his stakes in the mini-empire and the high-rise for the elderly in East Orange as collateral to help secure a $65 million loan.

Tax records also reveal that at the peak of Mr. Trump's financial distress, his father extracted extraordinary sums from his empire. In 1990, Fred Trump's income exploded to $49,638,928 — several times what he paid himself in other years in that era.

Fred Trump, former employees say, detested taking unnecessary distributions from his companies because he would have to pay income taxes on them. So why would a penny-pinching, tax-hating 85-year-old in the twilight of his career abruptly pull so much money out of his cherished properties, incurring a tax bill of $12.2 million?

The Times found no evidence that Fred Trump made any significant debt payments or charitable donations. The frugality he brought to business carried over to the rest of his life. According to ledgers of his personal spending, he spent a grand total of $8,562 in 1991 and 1992 on travel and entertainment. His extravagances, such as they were, consisted of buying his wife the odd gift from Antonovich Furs or hosting family celebrations at the Peter Luger Steak House in Brooklyn. His home on Midland Parkway in Jamaica Estates, Queens, built with unfussy brick like so many of his apartment buildings, had little to distinguish it from neighboring houses beyond the white columns and crest framing the front door.

There are, however, indications that he wanted plenty of cash on hand to bail out his son if need be.

Such was the case with the rescue mission at his son's Trump's Castle casino. Donald Trump had wildly overspent on renovations, leaving the property dangerously low on operating cash. Sure enough, neither Trump's Castle nor its owner had the necessary funds to make an $18.4 million bond payment due in December 1990.

On Dec. 17, 1990, Fred Trump dispatched Howard Snyder, a trusted bookkeeper, to Atlantic City with a $3.35 million check. Mr. Snyder bought

$3.35 million worth of casino chips and left without placing a bet. Apparently, even this infusion wasn't sufficient, because that same day Fred Trump wrote a second check to Trump's Castle, for $150,000, bank records show.

With this ruse — it was an illegal $3.5 million loan under New Jersey gaming laws, resulting in a $65,000 civil penalty — Donald Trump narrowly avoided defaulting on his bonds.

BIRDS OF A FEATHER

Both the son and the father were masters of manipulating the value of their assets, making them appear worth a lot or a little depending on their needs.

As the chip episode demonstrated, father and son were of one mind about rules and regulations, viewing them as annoyances to be finessed or, when necessary, ignored. As described by family members and associates in interviews and sworn testimony, theirs was an intimate, endless confederacy sealed by blood, shared secrets and a Hobbesian view of what it took to dominate and win. They talked almost daily and saw each other most weekends. Donald Trump sat at his father's right hand at family meals and participated in his father's monthly strategy sessions with his closest advisers. Fred Trump was a silent, watchful presence at many of Donald Trump's news conferences.

"I probably knew my father as well or better than anybody," Donald Trump said in a 2000 deposition.

They were both fluent in the language of half-truths and lies, interviews and records show. They both delighted in transgressing without getting caught. They were both wizards at manipulating the value of their assets,

making them appear worth a lot or a little depending on their needs.

Those talents came in handy when Fred Trump Jr. died, on Sept. 26, 1981, at age 42 from complications of alcoholism, leaving a son and a daughter. The executors of his estate were his father and his brother Donald.

Fred Trump Jr.'s largest asset was his stake in seven of the eight buildings his father had transferred to his children. The Trumps would claim that those properties were worth $90.4 million when they finished converting them to cooperatives within a few years of his death. At that value, his stake could have generated an estate tax bill of nearly $10 million.

But the tax return signed by Donald Trump and his father claimed that Fred Trump Jr.'s estate owed just $737,861. This result was achieved by lowballing all seven buildings. Instead of valuing them at $90.4 million, Fred and Donald Trump submitted appraisals putting them at $13.2 million.

Emblematic of their audacity was Park Briar, a 150-unit building in Queens. As it happened, 18 days before Fred Trump Jr.'s death, the Trump siblings had submitted Park Briar's co-op conversion plan, stating under oath that the building was worth $17.1 million. Yet as Fred Trump Jr.'s executors, Donald Trump and his father claimed on the tax return that Park Briar was worth $2.9 million when Fred Trump Jr. died.

This fantastical claim — that Park Briar should be taxed as if its value had fallen 83 percent in 18 days — slid past the I.R.S. with barely a protest. An auditor insisted the value should be increased by $100,000, to $3 million.

During the 1980s, Donald Trump became notorious for leaking word that he was taking positions in stocks, hinting of a possible takeover, and then either selling on the run-up or trying to extract lucrative concessions from the target company to make him go away. It was a form of stock manipulation with an unsavory label: "greenmailing." The Times unearthed evidence that Mr. Trump enlisted his father as his greenmailing wingman.

On Jan. 26, 1989, Fred Trump bought 8,600 shares of Time Inc. for $934,854, his tax returns show. Seven days later, Dan Dorfman, a financial columnist known to be chatty with Donald Trump, broke the news that the

younger Trump had "taken a sizable stake" in Time. Sure enough, Time's shares jumped, allowing Fred Trump to make a $41,614 profit in two weeks.

Later that year, Fred Trump bought $5 million worth of American Airlines stock. Based on the share price — $81.74 — it appears he made the purchase shortly before Mr. Dorfman reported that Donald Trump was taking a stake in the company. Within weeks, the stock was over $100 a share. Had Fred Trump sold then, he would have made a quick $1.3 million. But he didn't, and the stock sank amid skepticism about his son's history of hyped takeover attempts that fizzled. Fred Trump sold his shares for a $1.7 million loss in January 1990. A week later, Mr. Dorfman reported that Donald Trump had sold, too.

With other family members, Fred Trump could be cantankerous and cruel, according to sworn testimony by his relatives. "This is the stupidest thing I ever heard of," he'd snap when someone disappointed him. He was different with his son Donald. He might chide him — "Finish this job before you start that job," he'd counsel — but more often, he looked for ways to forgive and accommodate.

By 1987, for example, Donald Trump's loan debt to his father had grown to at least $11 million. Yet canceling the debt would have required Donald Trump to pay millions in taxes on the amount forgiven. Father and son found another solution, one never before disclosed, that appears to constitute both an unreported multimillion-dollar gift and a potentially illegal tax write-off.

In December 1987, records show, Fred Trump bought a 7.5 percent stake in Trump Palace, a 55-story condominium building his son was erecting on the Upper East Side of Manhattan. Most, if not all, of his investment, which totaled $15.5 million, was made by exchanging his son's unpaid debts for Trump Palace shares, records show.

Four years later, in December 1991, Fred Trump sold his entire stake in Trump Palace for just $10,000, his tax returns and financial statements reveal. Those documents do not identify who bought his stake. But other records indicate that he sold it back to his son.

Under state law, developers must file "offering plans" that identify to any potential condo buyer the project's sponsors — in other words, its owners. The Trump Palace offering plan, submitted in November 1989, identified two owners: Donald Trump and his father. But under the same law, if Fred Trump had sold his stake to a third party, Donald Trump would have been required to identify the new owner in an amended offering plan filed with the state attorney general's office. He did not do that, records show.

He did, however, sign a sworn affidavit a month after his father sold his stake. In the affidavit, submitted in a lawsuit over a Trump Palace contractor's unpaid bill, Donald Trump identified himself as "the" owner of Trump Palace.

Under I.R.S. rules, selling shares worth $15.5 million to your son for $10,000 is tantamount to giving him a $15.49 million taxable gift. Fred Trump reported no such gift.

According to tax experts, the only circumstance that would not have required Fred Trump to report a gift was if Trump Palace had been effectively bankrupt when he unloaded his shares.

Yet Trump Palace was far from bankrupt.

Property records show that condo sales there were brisk in 1991. Trump Palace sold 57 condos for $52.5 million — 94 percent of the total asking price for those units.

Donald Trump himself proclaimed Trump Palace "the most financially secure condominium on the market today" in advertisements he placed in 1991 to rebut criticism from buyers who complained that his business travails could drag down Trump Palace, too. In December, 17 days before his father sold his shares, he placed an ad vouching for the wisdom of investing in Trump Palace: "Smart money says there has never been a better time."

By failing to tell the I.R.S. about his $15.49 million gift to his son, Fred Trump evaded the 55 percent tax on gifts, saving about $8 million. At the same time, he declared to the I.R.S. that Trump Palace was almost a complete loss — that he had walked away from a $15.5 million investment

with just $10,000 to show for it.

Federal tax law prohibits deducting any loss from the sale of property between members of the same family, because of the potential for abuse. Yet Fred Trump appears to have done exactly that, dodging roughly $5 million more in income taxes.

The partnership between Fred and Donald Trump was not simply about the pursuit of riches. At its heart lay a more ambitious project, executed to perfection over decades — to create that origin story, the myth of Donald J. Trump, Self-Made Billionaire.

Donald Trump built the foundation for the myth in the 1970s by appropriating his father's empire as his own. By the late 1980s, instead of appropriating the empire, he was diminishing it. "It wasn't a great business, it was a good business," he said, as if Fred Trump ran a chain of laundromats. Yes, he told interviewers, his father was a wonderful mentor, but given the limits of his business, the most he could manage was a $1 million loan, and even that had to be repaid with interest.

Through it all, Fred Trump played along. Never once did he publicly question his son's claim about the $1 million loan. "Everything he touches seems to turn to gold," he told The Times for that first profile in 1976. "He's gone way beyond me, absolutely," he said when The Times profiled his son again in 1983. But for all Fred Trump had done to build the myth of Donald Trump, Self-Made Billionaire, there was, it turned out, one line he would not allow his son to cross.

A FAMILY RECKONING

Donald Trump tried to change his ailing father's will, prompting a backlash — but also a recognition that

plans had to be set in motion before Fred Trump died.

Fred Trump had given careful thought to what would become of his empire after he died, and had hired one of the nation's top estate lawyers to draft his will. But in December 1990, Donald Trump sent his father a document, drafted by one of his own lawyers, that sought to make significant changes to that will.

Fred Trump, then 85, had never before set eyes on the document, 12 pages of dense legalese. Nor had he authorized its preparation. Nor had he met the lawyer who drafted it.

Yet his son sent instructions that he needed to sign it immediately.

What happened next was described years later in sworn depositions by members of the Trump family during a dispute, later settled, over the inheritance Fred Trump left to Fred Jr.'s children. These depositions, obtained by The Times, reveal something startling: Fred Trump believed that the document potentially put his life's work at risk.

The document, known as a codicil, did many things. It protected Donald Trump's portion of the inheritance from his creditors and from his impending divorce settlement with his first wife, Ivana Trump. It strengthened provisions in the existing will making him the sole executor of his father's estate. But more than any of the particulars, it was the entirety of the codicil and its presentation as a fait accompli that alarmed Fred Trump, the depositions show. He confided to family members that he viewed the codicil as an attempt to go behind his back and give his son total control over his affairs. He said he feared that it could let Donald Trump denude his empire, even using it as collateral to rescue his failing businesses. (It was, in fact, the very month of the $3.5 million casino rescue.)

As close as they were — or perhaps because they were so close — Fred Trump did not immediately confront his son. Instead he turned to his daughter Maryanne Trump Barry, then a federal judge whom he often consulted on legal matters. "This doesn't pass the smell test," he told her,

she recalled during her deposition. When Judge Barry read the codicil, she reached the same conclusion. "Donald was in precarious financial straits by his own admission," she said, "and Dad was very concerned as a man who worked hard for his money and never wanted any of it to leave the family." (In a brief telephone interview, Judge Barry declined to comment.)

Fred Trump took prompt action to thwart his son. He dispatched his daughter to find new estate lawyers. One of them took notes on the instructions she passed on from her father: "Protect assets from DJT, Donald's creditors." The lawyers quickly drafted a new codicil stripping Donald Trump of sole control over his father's estate. Fred Trump signed it immediately.

Clumsy as it was, Donald Trump's failed attempt to change his father's will brought a family reckoning about two related issues: Fred Trump's declining health and his reluctance to relinquish ownership of his empire. Surgeons had removed a neck tumor a few years earlier, and he would soon endure hip replacement surgery and be found to have mild senile dementia. Yet for all the financial support he had lavished on his children, for all his abhorrence of taxes, Fred Trump had stubbornly resisted his advisers' recommendations to transfer ownership of his empire to the children to minimize estate taxes.

With every passing year, the actuarial odds increased that Fred Trump would die owning apartment buildings worth many hundreds of millions of dollars, all of it exposed to the 55 percent estate tax. Just as exposed was the mountain of cash he was sitting on. His buildings, well maintained and carrying little debt, consistently produced millions of dollars a year in profits. Even after he paid himself $109.7 million from 1988 through 1993, his companies were holding $50 million in cash and investments, financial records show. Tens of millions of dollars more passed each month through a maze of personal accounts at Chase Manhattan Bank, Chemical Bank, Manufacturers Hanover Trust, UBS, Bowery Savings and United Mizrahi, an Israeli bank.

Simply put, without immediate action, Fred Trump's heirs faced the prospect of losing hundreds of millions of dollars to estate taxes.

Whatever their differences, the Trumps formulated a plan to avoid this fate.

How they did it is a story never before told.

It is also a story in which Donald Trump played a central role. He took the lead in strategy sessions where the plan was devised with the consent and participation of his father and his father's closest advisers, people who attended the meetings told The Times. Robert Trump, the youngest sibling and the beta to Donald's alpha, was given the task of overseeing day-to-day details. After years of working for his brother, Robert Trump went to work for his father in late 1991.

The Trumps' plan, executed over the next decade, blended traditional techniques — such as rewriting Fred Trump's will to maximize tax avoidance — with unorthodox strategies that tax experts told The Times were legally dubious and, in some cases, appeared to be fraudulent. As a result, the Trump children would gain ownership of virtually all of their father's buildings without having to pay a penny of their own. They would turn the mountain of cash into a molehill of cash. And hundreds of millions of dollars that otherwise would have gone to the United States Treasury would instead go to Fred Trump's children.

'A DISGUISED GIFT'

A family company let Fred Trump funnel money to his children by effectively overcharging himself for repairs and improvements on his properties.

One of the first steps came on Aug. 13, 1992, when the Trumps incorporated a company named All County Building Supply & Maintenance.

All County had no corporate offices. Its address was the Manhasset, N.Y., home of John Walter, a favorite nephew of Fred Trump's. Mr. Walter, who

died in January, spent decades working for Fred Trump, primarily helping computerize his payroll and billing systems. He also was the unofficial keeper of Fred Trump's personal and business papers, his basement crowded with boxes of old Trump financial records. John Walter and the four Trump children each owned 20 percent of All County, records show.

All County's main purpose, The Times found, was to enable Fred Trump to make large cash gifts to his children and disguise them as legitimate business transactions, thus evading the 55 percent tax.

The way it worked was remarkably simple.

Each year Fred Trump spent millions of dollars maintaining and improving his properties. Some of the vendors who supplied his building superintendents and maintenance crews had been cashing Fred Trump's checks for decades. Starting in August 1992, though, a different name began to appear on their checks — All County Building Supply & Maintenance.

Mr. Walter's computer systems, meanwhile, churned out All County invoices that billed Fred Trump's empire for those same services and supplies, with one difference: All County's invoices were padded, marked up by 20 percent, or 50 percent, or even more, records show.

The Trump siblings split the markup, along with Mr. Walter.

The self-dealing at the heart of this arrangement was best illustrated by Robert Trump, whose father paid him a $500,000 annual salary. He approved many of the payments Fred Trump's empire made to All County; he was also All County's chief executive, as well as a co-owner. As for the work of All County — generating invoices — that fell to Mr. Walter, also on Fred Trump's payroll, along with a personal assistant Mr. Walter paid to work on his side businesses.

Years later, in his deposition during the dispute over Fred Trump's estate, Robert Trump would say that All County actually saved Fred Trump money by negotiating better deals. Given Fred Trump's long experience expertly squeezing better prices out of contractors, it was a surprising claim. It was also not true.

The Times's examination of thousands of pages of financial documents from Fred Trump's buildings shows that his costs shot up once All County entered the picture.

Beach Haven Apartments illustrates how this happened: In 1991 and 1992, Fred Trump bought 78 refrigerator-stove combinations for Beach Haven from Long Island Appliance Wholesalers. The average price was $642.69. But in 1993, when he began paying All County for refrigerator-stove combinations, the price jumped by 46 percent. Likewise, the price he paid for trash-compacting services at Beach Haven increased 64 percent. Janitorial supplies went up more than 100 percent. Plumbing repairs and supplies rose 122 percent. And on it went in building after building. The more Fred Trump paid, the more All County made, which was precisely the plan.

While All County systematically overcharged Fred Trump for thousands of items, the job of negotiating with vendors fell, as it always had, to Fred Trump and his staff.

Leon Eastmond can attest to this.

Mr. Eastmond is the owner of A. L. Eastmond & Sons, a Bronx company that makes industrial boilers. In 1993, he and Fred Trump met at Gargiulo's, an old-school Italian restaurant in Coney Island that was one of Fred Trump's favorites, to hash out the price of 60 boilers. Fred Trump, accompanied by his secretary and Robert Trump, drove a hard bargain. After negotiating a 10 percent discount, he made one last demand: "I had to pay the tab," Mr. Eastmond recalled with a chuckle.

There was no mention of All County. Mr. Eastmond first heard of the company when its checks started rolling in. "I remember opening my mail one day and out came a check for $100,000," he recalled. "I didn't recognize the company. I didn't know who the hell they were."

But as All County paid Mr. Eastmond the price negotiated by Fred Trump, its invoices to Fred Trump were padded by 20 to 25 percent, records obtained by The Times show. This added hundreds of thousands of dollars to the cost of the 60 boilers, money that then flowed through All County to Fred Trump's children without incurring any gift tax.

All County's owners devised another ruse to profit off Mr. Eastmond's boilers. To win Fred Trump's business, Mr. Eastmond had also agreed to provide mobile boilers for Fred Trump's buildings free of charge while new boilers were being installed. Yet All County charged Fred Trump rent on the same mobile boilers Mr. Eastmond was providing free, along with hookup fees, disconnection fees, transportation fees and operating and maintenance fees, records show. These charges siphoned hundreds of thousands of dollars more from Fred Trump's empire.

Mr. Walter, asked during a deposition why Fred Trump chose not to make himself one of All County's owners, replied, "He said because he would have to pay a death tax on it."

After being briefed on All County by The Times, Mr. Tritt, the University of Florida law professor, said the Trumps' use of the company was "highly suspicious" and could constitute criminal tax fraud. "It certainly looks like a disguised gift," he said.

While All County was all upside for Donald Trump and his siblings, it had an insidious downside for Fred Trump's tenants.

As an owner of rent-stabilized buildings in New York, Fred Trump needed state approval to raise rents beyond the annual increases set by a government board. One way to justify a rent increase was to make a major capital improvement. It did not take much to get approval; an invoice or canceled check would do if the expense seemed reasonable.

The Trumps used the padded All County invoices to justify higher rent increases in Fred Trump's rent-regulated buildings. Fred Trump, according to Mr. Walter, saw All County as a way to have his cake and eat it, too. If he used his "expert negotiating ability" to buy a $350 refrigerator for $200, he could raise the rent based only on that $200, not on the $350 sticker price "a normal person" would pay, Mr. Walter explained. All County was the way around this problem. "You have to understand the thinking that went behind this," he said.

As Robert Trump acknowledged in his deposition, "The higher the markup would be, the higher the rent that might be charged."

State records show that after All County's creation, the Trumps got approval to raise rents on thousands of apartments by claiming more than $30 million in major capital improvements. Tenants repeatedly protested the increases, almost always to no avail, the records show.

One of the improvements most often cited by the Trumps: new boilers.

"All of this smells like a crime," said Adam S. Kaufmann, a former chief of investigations for the Manhattan district attorney's office who is now a partner at the law firm Lewis Baach Kaufmann Middlemiss. While the statute of limitations has long since lapsed, Mr. Kaufmann said the Trumps' use of All County would have warranted investigation for defrauding tenants, tax fraud and filing false documents.

Mr. Harder, the president's lawyer, disputed The Times's reporting: "Should The Times state or imply that President Trump participated in fraud, tax evasion or any other crime, it will be exposing itself to substantial liability and damages for defamation."

All County was not the only company the Trumps set up to drain cash from Fred Trump's empire. A lucrative income source for Fred Trump was the management fees he charged his buildings. His primary management company, Trump Management, earned $6.8 million in 1993 alone. The Trumps found a way to redirect those fees to the children, too.

On Jan. 21, 1994, they created a company called Apartment Management Associates Inc., with a mailing address at Mr. Walter's Manhasset home. Two months later, records show, Apartment Management started collecting fees that had previously gone to Trump Management.

The only difference was that Donald Trump and his siblings owned Apartment Management.

Between All County and Apartment Management, Fred Trump's mountain of cash was rapidly dwindling. By 1998, records show, All County and Apartment Management were generating today's equivalent of $2.2 million a year for each of the Trump children.

Whatever income tax they owed on this money, it was considerably less

than the 55 percent tax Fred Trump would have owed had he simply given each of them $2.2 million a year.

But these savings were trivial compared with those that would come when Fred Trump transferred his empire — the actual bricks and mortar — to his children.

THE ALCHEMY OF VALUE

The transfer of most of Fred Trump's empire to his children began with a 'friendly' appraisal and an incredible shrinking act.

In his 90th year, Fred Trump still showed up at work a few days a week, ever dapper in suit and tie. But he had trouble remembering names — his dementia was getting worse — and he could get confused. In May 1995, with an unsteady hand, he signed documents granting Robert Trump power of attorney to act "in my name, place and stead."

Six months later, on Nov. 22, the Trumps began transferring ownership of most of Fred Trump's empire. (A few properties were excluded.) The instrument they used to do this was a special type of trust with a clunky acronym only a tax lawyer could love: GRAT, short for grantor-retained annuity trust.

GRATs are one of the tax code's great gifts to the ultrawealthy. They let dynastic families like the Trumps pass wealth from one generation to the next — be it stocks, real estate, even art collections — without paying a dime of estate taxes.

The details are numbingly complex, but the mechanics are straightforward. For the Trumps, it meant putting half the properties to be transferred into a GRAT in Fred Trump's name and the other half into a GRAT in his wife's

name. Then Fred and Mary Trump gave their children roughly two-thirds of the assets in their GRATs. The children bought the remaining third by making annuity payments to their parents over the next two years. By Nov. 22, 1997, it was done; the Trump children owned nearly all of Fred Trump's empire free and clear of estate taxes.

As for gift taxes, the Trumps found a way around those, too.

The entire transaction turned on one number: the market value of Fred Trump's empire. This determined the amount of gift taxes Fred and Mary Trump owed for the portion of the empire they gave to their children. It also determined the amount of annuity payments their children owed for the rest.

The I.R.S. recognizes that GRATs create powerful incentives to greatly undervalue assets, especially when those assets are not publicly traded stocks with transparent prices. Indeed, every $10 million reduction in the valuation of Fred Trump's empire would save the Trumps either $10 million in annuity payments or $5.5 million in gift taxes. This is why the I.R.S. requires families taking advantage of GRATs to submit independent appraisals and threatens penalties for those who lowball valuations.

In practice, though, gift tax returns get little scrutiny from the I.R.S. It is an open secret among tax practitioners that evasion of gift taxes is rampant and rarely prosecuted. Punishment, such as it is, usually consists of an auditor's requiring a tax payment closer to what should have been paid in the first place. "GRATs are typically structured so that no tax is due, which means the I.R.S. has reduced incentive to audit them," said Mitchell Gans, a professor of tax law at Hofstra University. "So if a gift is in fact undervalued, it may very well go unnoticed."

This appears to be precisely what the Trumps were counting on. The Times found evidence that the Trumps dodged hundreds of millions of dollars in gift taxes by submitting tax returns that grossly undervalued the real estate assets they placed in Fred and Mary Trump's GRATs.

According to Fred Trump's 1995 gift tax return, obtained by The Times, the Trumps claimed that properties including 25 apartment complexes with 6,988 apartments — and twice the floor space of the Empire State Building

— were worth just $41.4 million.

The implausibility of this claim would be made plain in 2004, when banks put a valuation of nearly $900 million on that same real estate.

The methods the Trumps used to pull off this incredible shrinking act were hatched in the strategy sessions Donald Trump participated in during the early 1990s, documents and interviews show. Their basic strategy had two components: Get what is widely known as a "friendly" appraisal of the empire's worth, then drive that number even lower by changing the ownership structure to make the empire look less valuable to the I.R.S.

A crucial step was finding a property appraiser attuned to their needs. As anyone who has ever bought or sold a home knows, appraisers can arrive at sharply different valuations depending on their methods and assumptions. And like stock analysts, property appraisers have been known to massage those methods and assumptions in ways that coincide with their clients' interests.

The Trumps used Robert Von Ancken, a favorite of New York City's big real estate families. Over a 45-year career, Mr. Von Ancken has appraised many of the city's landmarks, including Rockefeller Center, the World Trade Center, the Chrysler Building and the Empire State Building. Donald Trump recruited him after Fred Trump Jr. died and the family needed friendly appraisals to help shield the estate from taxes.

Mr. Von Ancken appraised the 25 apartment complexes and other properties in the Trumps' GRATs and concluded that their total value was $93.9 million, tax records show.

To assess the accuracy of those valuations, The Times examined the prices paid for comparable apartment buildings that sold within a year of Mr. Von Ancken's appraisals. A pattern quickly emerged. Again and again, buildings in the same neighborhood as Trump buildings sold for two to four times as much per square foot as Mr. Von Ancken's appraisals, even when the buildings were decades older, had fewer amenities and smaller apartments, and were deemed less valuable by city property tax appraisers.

Mr. Von Ancken valued Argyle Hall, a six-story brick Trump building in

Brooklyn, at $9.04 per square foot. Six blocks away, another six-story brick building, two decades older, had sold a few months earlier for nearly $30 per square foot. He valued Belcrest Hall, a Trump building in Queens, at $8.57 per square foot. A few blocks away, another six-story brick building, four decades older with apartments a third smaller, sold for $25.18 per square foot.

The pattern persisted with Fred Trump's higher-end buildings. Mr. Von Ancken appraised Lawrence Towers, a Trump building in Brooklyn with spacious balcony apartments, at $24.54 per square foot. A few months earlier, an apartment building abutting car repair shops a mile away, with units 20 percent smaller, had sold for $48.23 per square foot.

The Times found even starker discrepancies when comparing the GRAT appraisals against appraisals commissioned by the Trumps when they had an incentive to show the highest possible valuations.

Such was the case with Patio Gardens, a complex of nearly 500 apartments in Brooklyn.

Of all Fred Trump's properties, Patio Gardens was one of the least profitable, which may be why he decided to use it as a tax deduction. In 1992, he donated Patio Gardens to the National Kidney Foundation of New York/New Jersey, one of the largest charitable donations he ever made. The greater the value of Patio Gardens, the bigger his deduction. The appraisal cited in Fred Trump's 1992 tax return valued Patio Gardens at $34 million, or $61.90 a square foot.

By contrast, Mr. Von Ancken's GRAT appraisals found that the crown jewels of Fred Trump's empire, Beach Haven and Shore Haven, with five times as many apartments as Patio Gardens, were together worth just $23 million, or $11.01 per square foot.

In an interview, Mr. Von Ancken said that because neither he nor The Times had the working papers that described how he arrived at his valuations, there was simply no way to evaluate the methodologies behind his numbers. "There would be explanations within the appraisals to justify all the values," he said, adding, "Basically, when we prepare these things, we feel that these are going to be presented to the Internal Revenue Service

for their review, and they better be right."

Of all the GRAT appraisals Mr. Von Ancken did for the Trumps, the most startling was for 886 rental apartments in two buildings at Trump Village, a complex in Coney Island. Mr. Von Ancken claimed that they were worth less than nothing — negative $5.9 million, to be exact. These were the same 886 units that city tax assessors valued that same year at $38.1 million, and that a bank would value at $106.6 million in 2004.

It appears Mr. Von Ancken arrived at his negative valuation by departing from the methodology that he has repeatedly testified is most appropriate for properties like Trump Village, where past years' profits are a poor gauge of future value.

In 1992, the Trumps had removed the two Trump Village buildings from an affordable housing program so they could raise rents and increase their profits. But doing so cost them a property tax exemption, which temporarily put the buildings in the red. The methodology described by Mr. Von Ancken would have disregarded this blip into the red and valued the buildings based on the higher rents the Trumps would be charging. Mr. Von Ancken, however, appears to have based his valuation on the blip, producing an appraisal that, taken at face value, meant Fred Trump would have had to pay someone millions of dollars to take the property off his hands.

Mr. Von Ancken told The Times that he did not recall which appraisal method he used on the two Trump Village buildings. "I can only say that we value the properties based on market information, and based on the expected income and expenses of the building and what they would sell for," he said. As for the enormous gaps between his valuation and the 1995 city property tax appraisal and the 2004 bank valuation, he argued that such comparisons were pointless. "I can't say what happened afterwards," he said. "Maybe they increased the income tremendously."

THE MINORITY OWNER

To further whittle the empire's valuation, the family created the appearance that Fred Trump held only 49.8 percent.

Armed with Mr. Von Ancken's $93.9 million appraisal, the Trumps focused on slashing even this valuation by changing the ownership structure of Fred Trump's empire.

The I.R.S. has long accepted the idea that ownership with control is more valuable than ownership without control. Someone with a controlling interest in a building can decide if and when the building is sold, how it is marketed and what price to accept. However, since someone who owns, say, 10 percent of a $100 million building lacks control over any of those decisions, the I.R.S. will let him claim that his stake should be taxed as if it were worth only $7 million or $8 million.

But Fred Trump had exercised total control over his empire for more than seven decades. With rare exceptions, he owned 100 percent of his buildings. So the Trumps set out to create the fiction that Fred Trump was a minority owner. All it took was splitting the ownership structure of his empire. Fred and Mary Trump each ended up with 49.8 percent of the corporate entities that owned his buildings. The other 0.4 percent was split among their four children.

Splitting ownership into minority interests is a widely used method of tax avoidance. There is one circumstance, however, where it has at times been found to be illegal. It involves what is known in tax law as the step transaction doctrine — where it can be shown that the corporate restructuring was part of a rapid sequence of seemingly separate maneuvers actually conceived and executed to dodge taxes. A key issue, according to tax experts, is timing — in the Trumps' case, whether they split up Fred Trump's empire just before they set up the GRATs.

In all, the Trumps broke up 12 corporate entities to create the appearance of minority ownership. The Times could not determine when five of the 12 companies were divided. But records reveal that the other seven were split up just before the GRATs were established.

The pattern was clear. For decades, the companies had been owned solely by Fred Trump, each operating a different apartment complex or shopping center. In September 1995, the Trumps formed seven new limited liability companies. Between Oct. 31 and Nov. 8, they transferred the deeds to the seven properties into their respective L.L.C.'s. On Nov. 21, they recorded six of the deed transfers in public property records. (The seventh was recorded on Nov. 24.) And on Nov. 22, 49.8 percent of the shares in these seven L.L.C.'s was transferred into Fred Trump's GRAT and 49.8 percent into Mary Trump's GRAT.

That enabled the Trumps to slash Mr. Von Ancken's valuation in a way that was legally dubious. They claimed that Fred and Mary Trump's status as minority owners, plus the fact that a building couldn't be sold as easily as a share of stock, entitled them to lop 45 percent off Mr. Von Ancken's $93.9 million valuation. This claim, combined with $18.3 million more in standard deductions, completed the alchemy of turning real estate that would soon be valued at nearly $900 million into $41.4 million.

According to tax experts, claiming a 45 percent discount was questionable even back then, and far higher than the 20 to 30 percent discount the I.R.S. would allow today.

As it happened, the Trumps' GRATs did not completely elude I.R.S. scrutiny. Documents obtained by The Times reveal that the I.R.S. audited Fred Trump's 1995 gift tax return and concluded that Fred Trump and his wife had significantly undervalued the assets being transferred through their GRATs.

The I.R.S. determined that the Trumps' assets were worth $57.1 million, 38 percent more than the couple had claimed. From the perspective of an I.R.S. auditor, pulling in nearly $5 million in additional revenue could be considered a good day's work. For the Trumps, getting the I.R.S. to agree that Fred Trump's properties were worth only $57.1 million was a triumph.

"All estate matters were handled by licensed attorneys, licensed C.P.A.s and licensed real estate appraisers who followed all laws and rules strictly," Mr. Harder, the president's lawyer, said in his statement.

In the end, the transfer of the Trump empire cost Fred and Mary Trump

$20.5 million in gift taxes and their children $21 million in annuity payments. That is hundreds of millions of dollars less than they would have paid based on the empire's market value, The Times found.

Better still for the Trump children, they did not have to pay out a penny of their own. They simply used their father's empire as collateral to secure a line of credit from M&T Bank. They used the line of credit to make the $21 million in annuity payments, then used the revenue from their father's empire to repay the money they had borrowed.

On the day the Trump children finally took ownership of Fred Trump's empire, Donald Trump's net worth instantly increased by many tens of millions of dollars. And from then on, the profits from his father's empire would flow directly to him and his siblings. The next year, 1998, Donald Trump's share amounted to today's equivalent of $9.6 million, The Times found.

This sudden influx of wealth came only weeks after he had published "The Art of the Comeback."

"I learned a lot about myself during these hard times," he wrote. "I learned about handling pressure. I was able to home in, buckle down, get back to the basics, and make things work. I worked much harder, I focused, and I got myself out of a box."

Over 244 pages he did not mention that he was being handed nearly 25 percent of his father's empire.

REMNANTS OF EMPIRE

After Fred Trump's death, his children used familiar methods to devalue what little of his life's work was still in his name.

During Fred Trump's final years, dementia stole most of his memories. When family visited, there was one name he could reliably put to a face.

Donald.

On June 7, 1999, Fred Trump was admitted to Long Island Jewish Medical Center, not far from the house in Jamaica Estates, for treatment of pneumonia. He died there on June 25, at the age of 93.

Fifteen months later, Fred Trump's executors — Donald, Maryanne and Robert — filed his estate tax return. The return, obtained by The Times, vividly illustrates the effectiveness of the tax strategies devised by the Trumps in the early 1990s.

Fred Trump, one of the most prolific New York developers of his time, owned just five apartment complexes, two small strip malls and a scattering of co-ops in the city upon his death. The man who paid himself $50 million in 1990 died with just $1.9 million in the bank. He owned not a single stock, bond or Treasury bill. According to his estate tax return, his most valuable asset was a $10.3 million I.O.U. from Donald Trump, money his son appears to have borrowed the year before Fred Trump died.

The bulk of Fred Trump's empire was nowhere to be found on his estate tax return. And yet Donald Trump and his siblings were not done. Recycling the legally dubious techniques they had mastered with the GRATs, they dodged tens of millions of dollars in estate taxes on the remnants of empire that Fred Trump still owned when he died, The Times found.

As with the GRATs, they obtained appraisals from Mr. Von Ancken that grossly understated the actual market value of those remnants. And as with the GRATs, they aggressively discounted Mr. Von Ancken's appraisals. The result: They claimed that the five apartment complexes and two strip malls were worth $15 million. In 2004, records show, bankers would put a value of $176.2 million on the exact same properties.

The most improbable of these valuations was for Tysens Park Apartments, a complex of eight buildings with 1,019 units on Staten Island. On the portion of the estate tax return where they were required to list Tysens Park's value, the Trumps simply left a blank space and claimed they owed

no estate taxes on it at all.

As with the Trump Village appraisal, the Trumps appear to have hidden key facts from the I.R.S. Tysens Park, like Trump Village, had operated for years under an affordable housing program that by law capped Fred Trump's profits. This cap drastically reduced the property's market value.

Except for one thing: The Trumps had removed Tysens Park from the affordable housing program the year before Fred Trump died, The Times found. When Donald Trump and his siblings filed Fred Trump's estate tax return, there were no limits on their profits. In fact, they had already begun raising rents.

As their father's executors, Donald, Maryanne and Robert were legally responsible for the accuracy of his estate tax return. They were obligated not only to give the I.R.S. a complete accounting of the value of his estate's assets, but also to disclose all the taxable gifts he made during his lifetime, including, for example, the $15.5 million Trump Palace gift to Donald Trump and the millions of dollars he gave his children via All County's padded invoices.

"If they knew anything was wrong they could be in violation of tax law," Mr. Tritt, the University of Florida law professor, said. "They can't just stick their heads in the sand."

In addition to drastically understating the value of apartment complexes and shopping centers, Fred Trump's estate tax return made no mention of either Trump Palace or All County.

It wasn't until after Fred Trump's wife, Mary, died at 88 on Aug. 7, 2000, that the I.R.S. completed its audit of their combined estates. The audit concluded that their estates were worth $51.8 million, 23 percent more than Donald Trump and his siblings had claimed.

That meant an additional $5.2 million in estate taxes. Even so, the Trumps' tax bill was a fraction of what they would have owed had they reported the market value of what Fred and Mary Trump owned at the time of their deaths.

Mr. Harder, the president's lawyer, defended the tax returns filed by the Trumps. "The returns and tax positions that The Times now attacks were examined in real time by the relevant taxing authorities," he said. "The taxing authorities requested a few minor adjustments, which were made, and then fully approved all of the tax filings. These matters have now been closed for more than a decade."

A GOOD TIME TO SELL

Donald Trump, in financial trouble again, pitched the idea of selling the still-profitable empire that his father had wanted to keep in the family.

In 2003, the Trump siblings gathered at Trump Tower for one of their periodic updates on their inherited empire.

As always, Robert Trump drove into Manhattan with several of his lieutenants. Donald Trump appeared with Allen H. Weisselberg, who had worked for Fred Trump for two decades before becoming his son's chief financial officer. The sisters, Maryanne Trump Barry and Elizabeth Trump Grau, were there as well.

The meeting followed the usual routine: a financial report, a rundown of operational issues and then the real business — distributing profits to each Trump. The task of handing out the checks fell to Steve Gurien, the empire's finance chief.

A moment later, Donald Trump abruptly changed the course of his family's history: He said it was a good time to sell.

Fred Trump's empire, in fact, was continuing to produce healthy profits, and selling contradicted his stated wish to keep his legacy in the family. But Donald Trump insisted that the real estate market had peaked and that the

time was right, according to a person familiar with the meeting.

He was also, once again, in financial trouble. His Atlantic City casinos were veering toward another bankruptcy. His creditors would soon threaten to oust him unless he committed to invest $55 million of his own money.

Yet if Donald Trump's sudden push to sell stunned the room, it met with no apparent resistance from his siblings. He directed his brother to solicit private bids, saying he wanted the sale handled quickly and quietly. Donald Trump's signature skill — drumming up publicity for the Trump brand — would sit this one out.

Three potential bidders were given access to the finances of Fred Trump's empire — 37 apartment complexes and several shopping centers. Ruby Schron, a major New York City landlord, quickly emerged as the favorite. In December 2003, Mr. Schron called Donald Trump and they came to an agreement; Mr. Schron paid $705.6 million for most of the empire, which included paying off the Trumps' mortgages. A few remaining properties were sold to other buyers, bringing the total sales price to $737.9 million.

On May 4, 2004, the Trump children spent most of the day signing away ownership of what their father had doggedly built over 70 years. The sale received little news coverage, and an article in The Staten Island Advance included the rarest of phrases: "Trump did not return a phone call seeking comment."

Even more extraordinary was this unreported fact: The banks financing Mr. Schron's purchase valued Fred Trump's empire at nearly $1 billion. In other words, Donald Trump, master dealmaker, sold his father's empire for hundreds of millions less than it was worth.

Within a year of the sale, Mr. Trump spent $149 million in cash on a rapid series of transactions that bolstered his billionaire bona fides. In June 2004 he agreed to pay $73 million to buy out his partner in the planned Trump International Hotel & Tower in Chicago. ("I'm just buying it with my own cash," he told reporters.) He paid $55 million in cash to make peace with his casino creditors. Then he put up $21 million more in cash to help finance his purchase of Maison de l'Amitié, a waterfront mansion in Palm Beach, Fla., that he later sold to a Russian oligarch.

The first season of "The Apprentice" was broadcast in 2004, just as Donald Trump was wrapping up the sale of his father's empire. The show's opening montage — quick cuts of a glittering Trump casino, then Trump Tower, then a Trump helicopter mid-flight, then a limousine depositing the man himself at the steps of his jet, all set to the song "For the Love of Money" — is a reminder that the story of Donald Trump is fundamentally a story of money.

Money is at the core of the brand Mr. Trump has so successfully sold to the world. Yet essential to that mythmaking has been keeping the truth of his money — how much of it he actually has, where and whom it came from — hidden or obscured. Across the decades, aided and abetted by less-than-aggressive journalism, Mr. Trump has made sure his financial history would be sensationalized far more than seen.

Just this year, in a confessional essay for The Washington Post, Jonathan Greenberg, a former reporter for Forbes, described how Mr. Trump, identifying himself as John Barron, a spokesman for Donald Trump, repeatedly and flagrantly lied to get himself on the magazine's first-ever list of wealthiest Americans in 1982. Because of Mr. Trump's refusal to release his tax returns, the public has been left to interpret contradictory glimpses of his income offered up by anonymous leaks. A few pages from one tax return, mailed to The Times in September 2016, showed that he declared a staggering loss of $916 million in 1995. A couple of pages from another return, disclosed on Rachel Maddow's program, showed that he earned an impressive $150 million in 2005.

In a statement to The Times, the president's spokeswoman, Sarah Huckabee Sanders, reiterated what Mr. Trump has always claimed about the evolution of his fortune: "The president's father gave him an initial $1 million loan, which he paid back. President Trump used this money to build an incredibly successful company as well as net worth of over $10 billion, including owning some of the world's greatest real estate."

Today, the chasm between that claim of being worth more than $10 billion and a Bloomberg estimate of $2.8 billion reflects the depth of uncertainty that remains about one of the most chronicled public figures in American

history. Questions about newer money sources are rapidly accumulating because of the Russia investigation and lawsuits alleging that Mr. Trump is violating the Constitution by continuing to do business with foreign governments.

But the more than 100,000 pages of records obtained during this investigation make it possible to sweep away decades of misinformation and arrive at a clear understanding about the original source of Mr. Trump's wealth — his father.

Here is what can be said with certainty: Had Mr. Trump done nothing but invest the money his father gave him in an index fund that tracks the Standard & Poor's 500, he would be worth $1.96 billion today. As for that $1 million loan, Fred Trump actually lent him at least $60.7 million, or $140 million in today's dollars, The Times found.

And there is one more Fred Trump windfall coming Donald Trump's way. Starrett City, the Brooklyn housing complex that the Trumps invested in back in the 1970s, sold this year for $905 million. Donald Trump's share of the proceeds is expected to exceed $16 million, records show.

It was an investment made with Fred Trump's money and connections. But in Donald Trump's version of his life, Starrett City is always and forever "one of the best investments I ever made."

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Mr. PASCRELL. Mr. Chairman, I can't—I must be—it is going to take time for my questions. Thank you. About hypocrisy, hypocrisy. So we want to protect the privacy of the President, and I would too, but we don't want to follow law. When I said no one is above the law, I mean, no one is above the tax law. And in this case, the tax law is 6103. It is the law of the land. When Democrats and Republicans feasted on scandal and bribery. That is the law of the land.

So he is not above the President of the United States. President Trump is not above 6103. And it pertains to everybody in the executive branch of government, not just the President. Because Secretary Fall, who was the Secretary of the Interior at the time, is the one who put this scheme together, and went after him back in 1923. Okay. That is what happened.

So, Mr. Kies, thank you for joining all these great people like yourself. I have read your stuff. We don't agree on some things and we do agree on some things. What do you know about that?

So, Mr. Kies, do you believe—this is a different part of the question. Do you believe Committee Republicans violated the law in 2014 when they released taxpayer information, over 50 taxpayers, and they found nothing? Do you believe they violated the law?

Mr. KIES. Absolutely.

Mr. PASCRELL. Thank you very much, Mr. Kies. Thank you for your honesty. That is what I expected.

So let me have a question here for Mr. George Yin, Professor Yin. Some on this Committee have claimed that releasing the tax returns of the President under 6103, that authority to be a political abuse of power. By the way, we sent numerous letters to Mr. Brady when he was the chairman of the Committee saying let's do this together so it is not partisan. Bull to what they are saying today.

Professor Yin, you have written about this Committee's use of 6103, this Committee, to obtain and release the tax information of more than 50 taxpayers in 2014. That happened along partisan lines. Republicans voted to release the information, Democrats are opposed. Can you explain your thoughts on the Committee's use of 6103 in 2014?

Mr. YIN. Congressman Pascrell, I would be happy to. In that instance, the Committee did release the tax return information of, by my count, 51 separate organizations, with almost half of them having multiple pieces of tax return information disclosed. And I looked very closely at that whole situation. Forty-one of the organizations had absolutely nothing to do with the specific Committee investigation and allegations relating to Lois Lerner and the IRS and the purported discrimination by the agency against right-leaning exempt organizations. They had absolutely nothing to do with it. And so the release of those the information for those 41 seemed to me to be a clear violation.

The other 10 organizations, which were all right-leaning exempt organizations, the Committee's allegations with respect to them were that they weren't processed quickly enough. The allegations did not go to the substance of the actual applications themselves. And so it seemed to me that if the Committee wanted to publish a letter indicating the objection as to how it viewed the IRS and Ms. Lerner's treatment, they there was absolutely no reason to

name the organizations and to reveal any tax return information. They could have made exactly the same point as the Treasury Inspector General had made just a few months earlier in bringing the matter up to the attention of the Committee by referring to 10 right-leaning exempt organizations or 10 Tea Party type organizations, or whatever name would be appropriate, to provide the general sense without necessarily naming and revealing any tax return information. So I concluded all 51 disclosures were a violation of the law.

Mr. PASCRELL. Mr. Chairman, thank you for your courtesies and your indulgence. This is a very critical issue for the American people who are interested in this subject. We are not interested in getting someone; we are interested in following the law. Period. That is it. Give us the chance to do that. Give us a chance—what am I saying? Give us a chance to follow the law, and that is what we are doing, and we will not stop. Thank you.

Chairman. LEWIS. Thank you, Mr. Pascrell.

The chair is now pleased to recognize Mr. Ferguson, 5 minutes.

Mr. FERGUSON. Thank you, Mr. Chairman. And I would like to yield as much time as he may consume to my colleague, Mr. Rice.

Mr. RICE. Mr. Pascrell said that we need to follow the law, right? We need to follow the law.

Mr. Thorndike, can you cite any statutory authority as a law that requires the President to disclose his tax returns?

Mr. KIES. There is no requirement that the President——

Mr. RICE. Mr. Yin.

Mr. YIN. Nothing in the law right now.

Mr. RICE. Okay, thank you.

Mr. Rosenthal.

Mr. ROSENTHAL. None to my knowledge.

Mr. RICE. Mr.—I can't read it. I am sorry.

Mr. BOOKBINDER. Bookbinder.

Mr. RICE [continuing]. Bookbinder.

Mr. BOOKBINDER. No current law, though there is a bill that you are discussing——

Mr. RICE. Mr. Kies, what is the statutory requirement?

Mr. KIES. There is none.

Mr. RICE. There is none. So we are following the law. And, you know, why would we want the President to be required to disclose his tax returns? I mean, it has been real clear from the testimony of all of the witnesses here that we want to check for conflicts. I mean, really that is the primary reason, right? We want to see personal benefit or conflicts. So why hadn't we thought about that till now? Oh, wait, we have.

Doesn't the President have to make disclosures, Mr. Thorndike, Dr. Thorndike?

Mr. THORNDIKE. In what sense, disclosures——

Mr. RICE. Doesn't he have to make financial disclosures?

Mr. THORNDIKE. Yes, but that is not—those are not—that is not necessarily what we are talking about, I don't think.

Mr. RICE. Well, I mean, the Ethics in Government Act of 1978 requires personal financial disclosure forms by the President and all Members of Congress as well, right?

Mr. THORNDIKE. It is true, but if the President——

Mr. RICE. And it is very detailed about what we have to disclose. I mean, we have to disclose—I am a CPA, I am a tax lawyer.

Mr. THORNDIKE. It is true——

Mr. RICE. We have to disclose a lot more information than you have to disclose on a tax return about ownership, about percentages, about—you know, in fact, Ms. Moore was asking, she would like to know more about the President's loans at Deutsche Bank. I just pulled up the President's forms, it is 108 pages long. The loan to Deutsche Bank is listed right there, the rate, when the loan matures, the amount of the loan.

Could you look at the President's tax return, Mr. Kies, and determine what the rate was on his Deutsche Bank loan?

Mr. KIES. I think it is probably unlikely.

Mr. RICE. Yeah. And would you even know he borrowed the money from Deutsche Bank if you were looking at his tax return?

Mr. KIES. It is unlikely. Probably the only way you would know these things is by, and as has been pointed out by some of the other witnesses——

Mr. RICE. Now, if Congress thought, you know, if the government thought that disclosing tax returns should be required, Mr. Rosenthal, could we not have required that in the ethics acts of 1976?

Mr. ROSENTHAL. At the time, there were voluntary disclosures going on, it may not have been viewed as necessary.

Mr. RICE. Could we have required that, Mr. Bookbinder? Yes or no.

Mr. BOOKBINDER. Yes.

Mr. RICE. Yeah, of course we could—but we didn't think it was sufficiently important to require it. We don't think it is sufficiently important unless it is our political enemy.

Mr. Pascrell was talking about hypocrisy. I will tell you, the Democrats are about anything hypocritical. They love to weaponize the IRS, a/k/a Lois Lerner and now going after the President's tax returns.

I think in the STOCK Act, we recently reviewed this ethics disclosure, and we tightened it up, what, 2 or 3 years ago. So this is something that is not new. This is something that has been considered over and over again. It has been tightened more and more. And, you know, in our zeal, in the zeal of my friends across the aisle to attack this President, to weaponize agencies of the Federal Government, including the FBI and the DOJ and now the IRS, to pursue him with any means possible, now they want to go after his tax returns when it is not required, it has never been required. We could have required it any time we thought it was appropriate. We could have passed the law.

There is a prospective bill put out there now that may be considered at some point and, hell, maybe it will pass, but there is nothing that requires the President to disclose his tax returns. To say that the President is not complying with the law is an abject falsehood. It is an abject falsehood.

One more time. Mr. Kies, is the President required to disclose his tax returns?

Mr. KIES. No.

Mr. RICE. Thank you, Mr. Chairman. I yield back.

Chairman. LEWIS. The chair is pleased now to recognize the gentleman from Texas, Mr. Doggett.

Mr. DOGGETT. Thank you very much Mr. Chairman.

We, today, pursue two issues. One is how to address with new legislation a situation where a future President might decide to reverse himself or herself the way President Trump did and not make available tax returns as all recent candidates for President have done. And the second is to look at the basis and the process under a law that is almost a century old that gives the chairman of this Committee the authority to review tax returns, and if this Committee so decides, that it is in the public interest for this Committee to vote to send that information to the House where it can eventually be made a matter of public interest.

I, seeing the President's reversal, his entanglement with interest abroad and at home, seeing reports that he and his family may have benefited in excess of $1 billion from the tax bill that he forced through here without a single person from his Administration coming to testify in favor of it or explain it, seeing all that, I moved on six different occasions in this Committee over the last 2 years to use 6103 to obtain the President's tax returns. And each time, there were excuses and coverup from our Republican colleagues as they obstructed and protected the President.

Now, the President apparently had enough concern about this that he did have a review made of his tax returns. The review was made by the President's own lawyers; in fact, from a firm that proudly declares that it was the Russia law firm of the year that made the review of his returns, noting not only that he had personal returns, but more than 500 separate entities, entities that stretch from Azerbaijan to Panama. And they gave him an all clear, this personal law firm, of that. And I suppose that is a kind of review, but it is not one that inspires public confidence.

The Commissioner of the Internal Revenue Service, Charles Rettig, before he was appointed, said that, quote: For wealthy individuals, individual tax returns sometimes only provide a brief financial overview linked to numerous other conclusions and entities. To fully understand the financial status of Trump, one would likely need to see returns from multiple years, the work papers for the individual returns, and the returns for numerous related entities.

Mr. Rosenthal, do you agree with that statement?

Mr. ROSENTHAL. Yes, I do.

Mr. DOGGETT. And while having a President with such a sprawling business empire may be unprecedented, we know there are others. Some have already announced as possibilities as independents or Democrats for the 2020 election. Every President, vice president, and candidate for the future, I think, should be held to the same standard that we would apply to President Trump.

Mr. Bookbinder, do you believe that H.R. 1 should be strengthened to include a requirement that all candidates disclose their business entities?

Mr. BOOKBINDER. Yes. I think recent events make clear that that is really important.

Mr. DOGGETT. And, Mr. Rosenthal, might such information inform how much weight is given to a given policy of the President of the United States?

Mr. ROSENTHAL. Yes. Those type of disclosures would inform Congress' weight and deference to executive action.

Mr. DOGGETT. We know that the President plays a central role in tax policy, that his Office of Management and Budget offers a review of tax regulations that he lobbies for and influences and signs legislation, that the Treasury Department that he appoints plays a big role.

With these multiple roles that the President plays on tax policy, is it essential, Mr. Rosenthal, that we have his returns to review the impact on those policies?

Mr. ROSENTHAL. Yes. I believe the regulatory process and the discretion the President has with that process, warrant the Congress and this Committee understanding what financial interests he might yet have.

Mr. DOGGETT. Thank you.

And, Professor Yin, an important point, while our focus in this Committee is the tax system and the public confidence in that system and whether this President is using his office for personal gain, the responsibilities when you talk about the legitimate purpose for using 6103, doesn't that extend to many other issues, such as his possible violation of the emoluments clause, his entanglement with Russians and Saudis and others who he may be doing business with or for? Because this Committee has a responsibility broader than just its own jurisdiction over the tax cut.

Mr. YIN. Congressman Doggett, I believe you are right, and that is simply because Congress right now has delegated, exclusively to the tax committees this ability to inform the public about tax return information. So I believe that the legitimate purpose for the Ways and Means Committee would extend to a constitutional responsibility of Congress and not be limited to the legislative jurisdiction of the Committee.

Mr. DOGGETT. And just one final one, Mr. Chairman.

And, Professor Yin, is it also not true that this Committee, should it decide to make these records public, has powers that even the special counsel, Mr. Mueller, does not have?

Mr. YIN. Yes. That is a very valid point. And that is, again, another issue down the road, which is that the special counsel can disclose tax return information only in limited circumstances, such as a judicial or administrative proceeding. If he were to issue a report, it is not clear whether tax return information that might be critical to his conclusion in the report could, in fact, be revealed to the public, even assuming the Attorney General were to allow the report to be revealed at all. So that is another issue.

Mr. DOGGETT. Thank you, Mr. Chairman. And I just would ask unanimous consent to include in the record a—the testimony of Public Citizen concerning its support for the disclosure of Presidential and vice presidential tax returns, and the important report of Americans for Tax Fairness, The Case for Congress Obtaining Trump's Tax Returns.

Chairman. LEWIS. So ordered.

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February 7, 2019

U.S. House of Representatives
Ways & Means Committee Oversight Subcommittee
1139E Longworth House Office Bldg.
Washington, D.C. 20515
Via email to: W&Mdem.submission@mail.house.gov

Re: Public Citizen Statement for the Record in Support of Disclosure of Presidential and Vice Presidential Tax Returns

Dear Chairman Lewis and Honorable Members of the Subcommittee:

On behalf of Public Citizen's 500,000 members and supporters, we write to express our wholehearted support for disclosure of the tax returns of presidents, vice presidents and covered candidates for those offices. In addition to advocating for passage of the For the People Act (H.R. 1), the sweeping ethics, campaign finance and voting rights reform package-- both as Public Citizen and as a part of the diverse Declaration for American Democracy coalition-- as it moves through a number of committees, we also urge that the Ways & Means Committee use its powers granted under Sec. 6103(f)(1) of the Internal Revenue Code to request President Trump's tax returns from the Secretary of the U.S. Treasury Department.

H.R. 1 embodies the newly-elected Congress' promise to the nation to ensure that public officials work for the people by cleaning up corruption and holding government accountable. Among the far-reaching reforms contained in the bill is Title X, requiring disclosure of presidential and vice-presidential individual income tax returns, including those of covered candidates for those offices. While this would be a vast improvement on the status quo, it may leave Congress and civil society unable to fully analyze the myriad conflicts of interest that have plagued this administration helmed by a wealthy president who has not truly divested himself from his business investments.[1] Therefore, Public Citizen supports expanding the language of H.R. 1 to include a mechanism for disclosure of business-related returns as well. For example, H.R. 1 could be extended to require that candidates for the office of president and vice-president, as well as eventual office holders, disclose the returns for any entity for which the person is a beneficial owner, meaning he

[1] PUBLIC CITIZEN and CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, TRUMP-PROOFING THE PRESIDENCY: A PLAN FOR EXECUTIVE BRANCH ETHICS REFORM (Oct. 2, 2018), https://bit.ly/2RdMAAp.

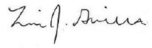
or she exercises control over the entity or has an interest in or receives substantial economic benefit from the assets of the entity.[2]

The Ways & Means Committee, however, must not wait until H.R. 1 is signed into law, and all Presidents have a legal requirement to disclose this information, to move forward with gaining President Trump's tax returns. The American public has been clamoring for this information since Donald Trump announced his candidacy for office, and his refusal to disclose this information despite decades of precedent set by his predecessors has intensified the real and apparent conflicts of interest posed by the intersection of his personal business affairs and the policies he has been advancing in his official office. For example, Trump owns hundreds of businesses, most of which are organized as limited liability companies (LLCs).[3] Under the Tax Cuts and Jobs Act, most LLCs and other companies organized as "pass-through" entities received an extremely generous new deduction.[4] Until the Ways & Means Committee uses its authority under Sec 6103 of the Code[5] to gain access to Trump's individual and business tax returns, you will be unable to provide proper legislative oversight into exactly how much he personally financially gained by pushing for those changes and signing the bill into law.

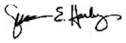
More than 11,300 of Public Citizen's supporters recently took action to call on Congress to use its authority to seek Trump's tax returns. This was in addition to the tens of thousands more who urged Trump to voluntarily release his returns shortly after his election to office, including countless activists who took to the streets during Tax March to demand disclosure of the returns. We urge you to listen to the will of We the People and investigate the extent of Trump's conflicts of interest as related to his income and business profits and the taxes he has or has not paid in recent years.

The outcome of last year's election made it clear that Americans are no longer willing to tolerate a government rife with self-dealing and ethical scandals. Addressing these problems means doing everything you can to advance H.R. 1 into law and extending Title X to include business-related returns. Additionally, this means acting swiftly in the interim to use Sec. 6103 authority to provide this Committee with the tax return information it needs to carry out its oversight function and provide checks and balances to the president and the rest of the executive branch.

Sincerely,



Lisa Gilbert
Vice President of Legislative Affairs
Public Citizen



Susan Harley
Deputy Director
Public Citizen's Congress Watch division

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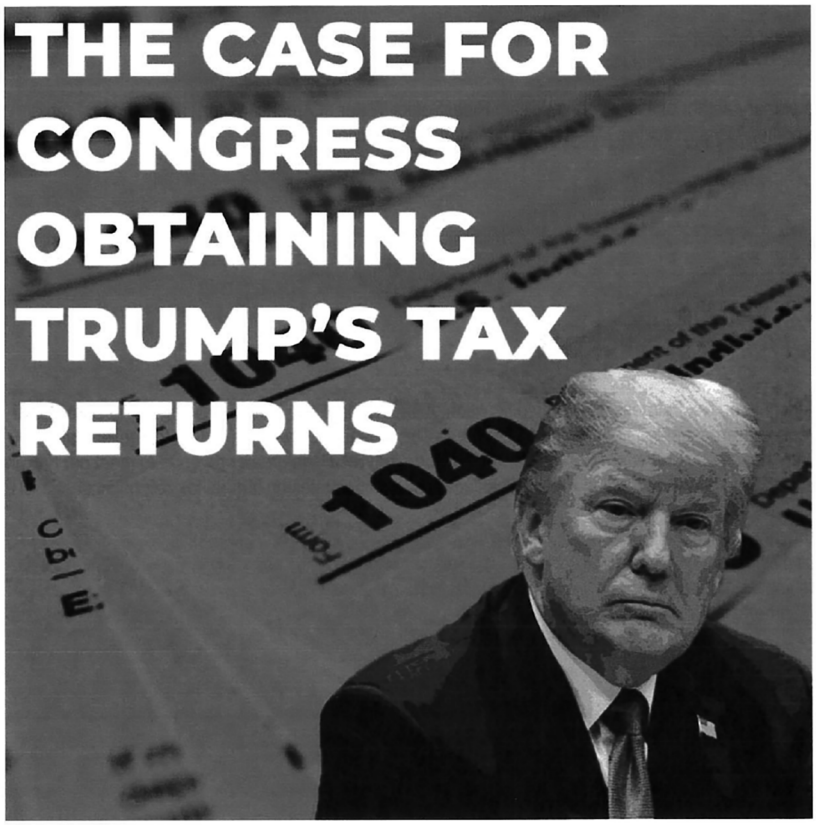
[2] See Public Law No. 115-91. https://bit.ly/2SAgUZe
[3] MIKE TANGLIS, PUBLIC CITIZEN, PRESIDENT TRUMP, INC. (Sept. 5, 2017), https://bit.ly/2UIw1NK.
[4] Marielle Segarra, *Confusion Reigns for Some Businesses Over "Pass-Through" Deduction*, MARKETPLACE (Jan. 14, 2019), https://bit.ly/2RIK6sL.
[5] George K. Yin, *Congressional Authority to Obtain And Release Tax Returns*, TAXNOTES, (Feb. 20, 2017), https://bit.ly/2MvQ5U0.



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AMERICANS FOR TaxFairness

Americans for Tax Fairness is a diverse coalition of 425 national and state endorsing organizations that collectively represent tens of millions of members. The organization was formed on the belief that the country needs comprehensive, progressive tax reform that results in greater revenue to meet our growing needs. ATF is playing a leading role in Washington and in the states on federal tax-reform issues.

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THE CASE FOR CONGRESS OBTAINING TRUMP'S TAX RETURNS

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THE CASE FOR CONGRESS OBTAINING TRUMP'S TAX RETURNS

KEY FINDINGS

- The chairman of the House Ways and Means Committee has the authority to inspect the tax returns of any taxpayer, including the president, and may submit those tax returns to the full House for review, effectively making them public.
- The incoming House of Representatives should make it a top priority to obtain and review President Trump's tax returns, including those of his businesses and trusts. Trump's tax returns would be invaluable tools for two distinct and equally important investigations:
  1. As guides to the complex financial structures and tax loopholes used by the wealthy, including President Trump, to determine if they are avoiding their fair share of taxes through unfair special breaks and how laws should be reformed to stop such tax avoidance and/or evasion.
  2. As the best source of answers to vital questions about Donald Trump's presidency, including whether there are any conflicts of interest and/or foreign influences that could be adversely affecting his exercise of official duties.
- President Trump is a billionaire, and yet has responded with pride to charges of going years without paying any federal income taxes. Reviewing his tax history could help explain how the very wealthy can go tax free and how to prevent it.
- The principal source of President Trump's wealth—real estate—is infamous for the special treatment it receives under the tax code. Reviewing if and how President Trump has exploited real estate tax loopholes would provide a useful roadmap for reform.
- Despite his claims to the contrary, President Trump and his family probably benefitted greatly from the tax legislation he promoted and signed into law. The public has a right to know if his support for the law, and for subsequent tax cuts, is influenced by personal financial gain.
- Credible media reports have chronicled instances of unethical tax avoidance and even tax fraud by President Trump and his family. The public has the right to know if he has in fact committed such acts; if so, has he ever been held accountable for them and does the IRS have the authority and capacity to hold him accountable now.
- President Trump has been credibly charged with taking public action to protect and enhance his private wealth, particularly in relation to his luxury hotel a few blocks from the White House. His tax returns are likely to reveal potential conflicts of interest.
- The president has shown inexplicable deference to the leaders of foreign powers in conflict with the United States, including Russia and Saudi Arabia, raising the possibility that his business connections in those countries are influencing his conduct of American foreign policy and threatening national security. His tax returns and those of his business entities could provide evidence of foreign business connections that jeopardize his independence.

INTRODUCTION

After more than three years in the dark about candidate and then President Trump's taxpayer status—whether he's an illustrative example of wealthy individuals dodging their fair share of taxes, has financial conflicts of interest that could influence his policy decisions, will derive private gain from his own tax-policy proposals, is being held accountable for any failure to meet his tax obligations—the new House of Representatives and the American people finally have the chance to learn the truth.

That truth has till now been blocked by President Trump's refusal to release his personal or business tax returns, despite 40 years of precedent,[1] constant demands by the press and public,[2] and his own frequent promises.[3]

The American people want the House to act. According to a recent poll, nearly two-thirds (63%) of respondents said the House should obtain President Trump's tax returns and release them to the public.[4] That majority opinion included 64% of independent voters.

President Nixon released his tax returns in 1973 in response to public questions about whether he was evading taxes.[5] President Ford released summaries of a decade's worth of his tax filings. Beginning with President Carter, presidents of both parties have routinely disclosed their annual returns, usually around Tax Day. Every major-party candidate except Ford has also released at least one year of past returns—and often many more—while running for president.[6] Other, earlier presidents and presidential candidates have also released personal tax information, which is available at the Tax History Project run by Tax Analysts.[7]

Although President Trump has repeatedly promised to follow those precedents and release his tax returns, to date he has failed to do so. Congress should no longer wait for him to volunteer this important information.

The House Committee on Ways and Means is among three congressional committees authorized to obtain directly from the IRS the tax returns of any taxpayer, including the president. Once the 116th Congress convenes in January, the new Ways and Means Committee should exercise this authority as part of a comprehensive investigation that seeks to answer a number of important policy questions vital to our democracy:

- Does our tax code contain overly generous tax breaks for wealthy individuals and profitable corporations that lets them avoid their fair share of tax?
- Are taxpayers able to use financial complexity, opaque business structures, or other devious means to defeat fair enforcement of the tax code?
- To what extent is President Trump, his family, or businesses benefitting from the 2017 tax overhaul he championed and signed into law?
- Has our president dodged his tax responsibilities? If so, has the IRS held him accountable in the past and is it equipped to do so now?
- Does President Trump have hidden business or financial conflicts of interest, especially with foreign powers, that have improperly influenced his policy decisions or could in the future?

HOW CONGRESS CAN OBTAIN TRUMP'S TAX RETURNS

It was in the wake of an earlier scandal-plagued presidency riddled with corruption and conflicts of interest—the Harding Administration of the 1920s—that Congress gave itself the right to inspect individual tax returns. Congressional leaders knew that review of those detailed filings submitted under penalty of perjury was a key way to detect official misconduct by members of the executive branch.[8]

Under 26 U.S. Code § 6103(f), the chair of the House Ways and Means Committee (along with the chair of the Senate Finance Committee and the Joint Committee on Taxation) has the authority to request the tax returns of any taxpayer.[9] The law states that, upon receipt of such a request, the Treasury Secretary "shall furnish" the returns to the committee. Such authority was used to help unravel the Watergate scandal in the 1970s and as recently as 2014 by House Republicans.[10] The committee may in turn submit those returns to the full House for review, effectively making them public.[11]

In the case of President Trump, a complete review of his taxpayer status would require more than his personal tax returns. That's because President Trump's business, The Trump Organization, is not a single entity, but rather a collection of some 500 so-called "pass-through" business entities.[12] Pass-throughs—which include sole proprietorships, partnerships, limited liability companies (LLCs), and S corporations—pay no tax themselves. Instead, they pass through profits and losses to their owners, who pay any tax due on their personal returns at individual rates.

Even though they don't pay taxes directly, all but the smallest pass-throughs are required to file independent tax returns with the IRS for informational purposes. For instance, each of President Trump's partnerships is required to file Form 1065 every year, specifying the sources of its income, expenses, gains, losses, and other information.[13] An S corporation of which he is a shareholder must file Form 1120S, providing similar data.[14]

President Trump and his family have used trusts for intergenerational transfers of wealth.[15] Those trusts are also required to file returns with the IRS.[16]

Once again, the detailed information appearing in these specialized tax returns are not replicated in President Trump's personal returns, which would present only the total dollar amounts derived from these outside entities. To obtain a full picture of President Trump's business interests, financial situation, and tax practices—including, for example, any investments or business activities in particular foreign countries—Congress would need to review not only his personal returns but also the returns filed by relevant pass-throughs, trusts, and similar entities.

WHY CONGRESS SHOULD OBTAIN TRUMP'S TAX RETURNS

The Supreme Court has held that Congress has broad authority to conduct investigations to carry out its legislative functions. Those functions include reviewing existing laws to determine how they are working and whether reforms are needed, analyzing executive branch actions to determine whether they faithfully execute the law, and providing appropriate checks and balances on the executive branch.[17] Obtaining the Trump tax returns would be a legitimate exercise of Congress' constitutional authority to conduct investigations for the following reasons.

Reason 1: To Better Identify Areas of the Tax Code Needing Reform

President Trump is worth about $3 billion and owns a profitable business, the Trump Organization.[18] Yet evidence suggests that in many years he's paid little or no federal income tax. Offered the chance to refute that suggestion before a worldwide audience, he bragged about it instead: when Democratic presidential candidate Hillary Clinton asserted in a debate that her opponent had engaged in a pattern of paying "nothing in federal taxes," candidate Trump replied, "That makes me smart."[19]

Reports of a billionaire going tax-free and his alarming response to those reports should prompt the House Ways and Means Committee to conduct an inquiry to determine—as a matter of fact rather than conjecture—how much income President Trump has made and how much tax he has paid before and during his time in office. If the facts confirm that, for years, President Trump has earned substantial income yet been legally able to pay little or no tax, that would provide powerful evidence of significant defects in the tax code that need fixing.

Real Estate Loopholes

Since President Trump is a real estate investor, such an inquiry could particularly enlighten lawmakers about reforms needed in the taxation of the real estate industry. This is needed because the current tax rules are written to provide these investors with a win-win situation and the Treasury Department with a lose-lose situation.

For example, when real estate investors make profits, they can defer reporting those to the IRS (through shelters such as like-kind exchanges) but when they have losses they can quickly report those losses to the IRS more easily than other taxpayers (through shelters like the special at-risk rules and passive loss rules for real estate). Investors get to write off the value of their real estate property even when that property is becoming more valuable. They can borrow to invest in real estate and put down almost none of their own money, then when the deal flops they can write off the losses. And if the lender forgives the debt, the investor doesn't have to report that as income either, the way other taxpayers would.

President Trump's returns might help Congress determine if such real estate tax breaks are overly generous and unfairly relieve investors of any meaningful tax obligation. The review could focus on the following real-estate tax preferences.

Depreciation

Businesses can write off, or "depreciate," the cost of certain property over time, reflecting gradual wear and tear that reduces value. But unlike, say, trucks and machinery, real estate often gains value over the years. (Only developed real estate can be depreciated, not raw land.) Yet, real estate professionals like President Trump are still allowed to depreciate commercial properties that are actually rising in market price, cutting their taxes even as their wealth grows.[20]

Real estate owners must give back some of the benefit of depreciation when they sell their property by paying a higher tax rate on the profit from the sale than they normally would. But for wealthy taxpayers like President Trump, that special "recapture" rate may be far below the size of the depreciation deductions taken over the years they owned the property.[21]

If confirmed as true, President Trump's reported use of depreciation to reduce or even eliminate large tax liabilities would provide a useful example of how this real-estate tax break may be abused. A 2016 *Washington Post* article reported, for example, that based on a filing President Trump made in the early 1980s to obtain a gambling license in New Jersey, he apparently paid zero federal income taxes in 1978 and 1979. The paper surmised he'd been able to zero out his taxable income, and therefore his tax bill, through depreciation deductions related to his real estate holdings.[22] A 2016 *Politico* article used a similar analysis to conclude that President Trump likely paid no federal income tax in 1991 and 1993. A 2016 *New York Times* article went farther, reporting that President Trump likely avoided paying any federal income taxes for up to 18 years, based upon the size of a depreciation loss he reported on a 1995 tax return leaked to the press: that loss was a staggering $916 million.[23]

When asked in the past about real estate depreciation tax deductions, President Trump who has called depreciation "a wonderful charge," stated: "I love depreciation."[24] A careful review of the Trump tax returns by the Ways and Means Committee could replace media speculation and those ad hoc remarks by the president with concrete information about how he actually used real estate depreciation deductions to lower his tax liability. That type of review could also provide the factual basis for a more informed policy discussion by the committee about whether and how this tax preference should be restricted to increase tax fairness.

At-Risk Rule

Most taxpayers can only claim losses from businesses in which their own money is at risk. The "at-risk" rule prevents investing in a business with a loan secured by that business (a mortgage), then claiming the tax benefit if the business loses money.[25] But real estate investors like President Trump have a special exception, allowing them to reap tax-saving losses from properties they bought mostly with borrowed money—money they can avoid ever having to repay simply by walking away from the property. It's highly unlikely, for instance, that anywhere near the full $916 million loss Trump claimed on his 1995 tax return was his own money, as opposed to borrowed funds. A committee review of the Trump tax returns could provide invaluable information on how the at-risk rule is used by real estate professionals to avoid paying tax, and why and how this tax preference may need to be curtailed.

Tax-Free Cancelled Debt

In most cases, cancelled debt is considered taxable income, because the forgiven debtor has received an economic benefit.[26] But under the existing tax code, cancelled debt related to commercial real estate is an exception to the rule and need not be counted as income. President Trump benefited from this exception when he borrowed billions of dollars in the 1980s, and then convinced his lenders to forgive much of that debt when his businesses began to fail in the early 1990s.[27] Because of the real estate loophole, President Trump apparently didn't need to report the forgiven debt as income. In addition, while he carried the debt, he was able to deduct the interest payments, further reducing his taxable income. A review of the Trump tax returns would provide an illuminating case history on how real estate professionals use this real estate exception to avoid paying taxes; it may also demonstrate why and how this loophole should be closed.

Capital Loss Deductions

Businesses can suffer two kinds of losses. An "operating loss" occurs when expenses exceed income—more cash goes out than comes in. A "capital loss" comes from selling an asset for less than what it cost to purchase. Generally, when figuring taxable income, capital losses can only be subtracted from capital gains (which are sales of assets above their original purchase price). But real estate investors like President Trump enjoy a special tax break that enables them to subtract their capital losses from regular income,

which is a better deal because regular income is taxed at higher rates than capital gains.[28] A committee review of the Trump tax returns could provide detailed information about how real estate professionals actually use capital loss deductions to avoid paying tax and why and how this real estate tax preference may need to be ended or curbed.

Passive Losses

Tax reform in 1986 abolished "tax shelters" in which investments deliberately designed to lose money were used to reduce taxable income.[29] The 1986 tax law prohibited subtracting such "passive losses" from "active" income generated by a trade or profession. But in 1993, after heavy lobbying by the real estate industry—including a personal appeal by Donald Trump[30]—Congress allowed real estate professionals to once again use passive rental losses to reduce their active, taxable income.[31] A review of the Trump tax returns would disclose how and the extent to which real estate professionals are today using passive rental losses to avoid paying federal income tax; it could also provide the factual basis for an informed analysis of whether and how this tax preference should be changed.

These five real estate tax breaks (and two other real-estate tax loopholes—like-kind exchanges and interest deductions—that are discussed under "Reason 3" because they were advantaged under the Tax Cuts and Jobs Act championed by the president) illustrate how an examination of the Trump tax returns could lead to important policy analysis and reforms. Real estate professionals have long been rumored to enjoy unfair tax benefits; President Trump would provide an excellent case study to test those rumors. As President Trump himself remarked in 2016, when *Politico* asked him to comment on claims that he'd failed to pay taxes in some years, "Welcome to the real estate business."[32]

Hiding Tax Liabilities in Complex Trusts and Business Organizations

Still another set of issues that could be examined through a review of the Trump tax returns involves the trusts that apparently name President Trump or his family members as beneficiaries. The Trump tax returns may contain evidence that would help the committee evaluate the extent to which those trusts were used to engage in for-profit business transactions while avoiding the payment of tax. The Trump tax returns could also contain evidence related to allegations made in an October 2018 *New York Times* expose that so-called GRAT trusts were used to transfer substantial wealth from President Trump's father to President Trump and his siblings, without paying gift or inheritance tax.[33] The Trump tax returns may contain information on other trusts as well, including their formation, holdings, operation, activities, and payment of tax. Depending upon what it learned from those returns, the committee could then evaluate whether tax rules on trusts needed to be strengthened.

Finally, an important issue profitably addressed by a committee review of the Trump tax returns would be the use of complex business structures to obscure and avoid tax liability. The Trump tax returns, including those filed by his 500 business entities (some with hidden owners or partners) could provide important information on how some wealthy taxpayers may be using opaque business ownership, offshore activities, or other devices to frustrate or impede enforcement of our tax laws. Depending upon the facts uncovered, the Trump tax returns could help identify specific weaknesses or gaps in the tax code which, if corrected, could strengthen tax enforcement.

Reforms could include measures to increase ownership transparency for business entities or simplify IRS rules for reviewing complex partnerships. The committee could also examine, for example, the creation of so-called "rebuttable presumptions." These would simplify the burden of proof that the IRS must meet in

enforcement actions, including allowing the IRS to presume that U.S. taxpayers who form, transfer assets to, or receive assets from offshore entities control those entities and must include the entities' offshore income in their own taxable income, unless the taxpayer proves otherwise.[34]

The Trump tax returns may contain other types of tax deductions, credits, preferences, or benefits that would merit a similar policy review and analysis. As a billionaire who's expressed pride rather than umbrage at reports of his paying zero federal income taxes for years on end, President Trump could serve as an invaluable case study of what's wrong with the way we tax the wealthy.

If a committee review of the Trump tax returns proves that President Trump has avoided paying taxes for years using these and other legal but unethical tax-avoidance techniques (and see "Reason 4" below for a discussion of possible illegal tax evasion), it might show the biggest problem with our tax system is what's legal but shouldn't be. That would help Congress determine how to reform the tax code to improve tax enforcement and restore tax justice.

Reason 2: To Determine the Extent to Which President Trump, His Family, and Businesses Are Benefiting from the 2017 Tax Law He Championed

During the debate over last year's GOP tax bill, President Trump falsely claimed that the Republican plan would "cost me a fortune."[35] His claim must be false because the tax law he championed concentrates its benefits on the wealthy,[36] and especially wealthy people who derive their income in the ways that President Trump does.[37]

But since President Trump has not released his tax returns, we can't know the extent to which he, his family, and his businesses will benefit from the 2017 tax law. We also don't know how much he would have benefitted from the second round of tax cuts he called for[38] and House Republicans passed in October 2018.[39]

In a representative democracy, it's imperative that voters know whether their elected officials are advocating policies for personal profit in addition to, or instead of, the public's benefit. Only then can they accurately judge the wisdom of the policy prescriptions and the conflicts of interest of the officeholder.

Following are some of the ways President Trump, his family, and his businesses may have benefited from various provisions of the 2017 tax plan he helped push through Congress and signed into law. Though based on the best information available, these are still speculations that should be replaced by the fact-based analysis only possible through a review of President Trump's tax returns, past and future.

Top Individual Tax Rate Cut

Under prior law, income above roughly $480,000 for a married couple was taxed at a top rate of 39.6%.[40] Under the new Trump-GOP tax law, the top rate has fallen to 37%, and that rate applies only to income over $600,000 for a married couple.[41] Unless everything we think we know about the president's finances are wrong, the income of President Trump and his wife exceed those levels by many multiples. That means lowering the top tax rate and raising the threshold over which it applies should pay off handsomely for the First Family.

It is also possible, however, that the Alternative Minimum Tax (AMT, which earlier versions of the tax law sought to abolish, and the final version altered) will reduce or eliminate the tax benefits accompanying the lower rate, a question that can be resolved only by reviewing the relevant Trump tax returns. Pages from Trump's 2005 federal tax return leaked to the media[42] show that it was the AMT that that made up 85% of his tax liability[43] that year and prevented him from paying an income tax rate of just 3%[44] on income of over $150 million.

Determining the impact of the new AMT combined with the new lower rates on the tax liabilities of the wealthiest Americans is a critical component of the Ways and Means Committee evaluation of the new tax law.

Corporate Tax Rate Cut

The keystone of the Trump-GOP tax law is an immediate, permanent cut in the top corporate tax rate from 35% to 21%—a 40% rate cut. The benefits of that corporate tax cut flow overwhelmingly to corporate shareholders.[45] President Trump's financial disclosure forms show that he, directly and through various trusts, owns millions of dollars in corporate stocks and mutual funds, and thus would benefit mightily from the corporate tax cut.[46] An analysis of the Trump tax returns would provide much more precise data on the extent of that tax benefit. That would deepen the Ways and Means Committee's understanding of how the corporate tax-rate cut affected the taxes of wealthy Americans.

20% Tax Deduction for Pass-Through Income

Pass-through businesses (which include sole proprietorships, partnerships, LLCs and S corporations) pay no federal income taxes at the corporate level. Instead, profits and losses pass through to the business owners, who pay any tax due on their personal returns at individual rates. Though 95% of the nation's businesses are pass-through entities,[47] the field is dominated by a handful of big players: half of all pass-through income goes to the wealthiest 1% of business owners.[48]

President Trump's business empire is a collection of more than 500 pass-through entities.[49] The Trump-GOP tax law allows pass-through business owners, for the first time, to deduct 20% of their pass-through business income from their taxable income, which effectively lowers the top tax rate to as low as 29.6%—7.4 percentage points below the 37% top marginal tax rate for the highest earners.[50] Many practical and policy questions have arisen about the operation and impact of this new tax deduction, including who can claim it, how much revenue will be lost, and its impact on tax fairness.[51]

Determining the impact of the new deduction on one of the biggest pass-through business owners in the country—Donald Trump—would be a good place to start a look for answers. Pages from Trump's 2005 federal tax return leaked to the media[52] show he had some $110 million in pass-through income (lines 12 and 17), suggesting that the new 20% tax deduction could have saved him nearly $11 million.[53]

Safeguards were supposedly built into the new pass-through tax deduction to prevent some types of businesses from taking advantage of it, including those that receive mostly "passive" income or that consist of a single person or small group. ***But surgically precise exemptions were written into those safeguards that allow certain real estate owners and investors, such as President Trump, to enjoy all of the new deduction's benefits.***

For instance: while common types of passive income like interest and dividends are ineligible for the new deduction and lower rates, rent, royalties and licensing fees are eligible.[54] It seems more than a coincidence those three types of revenue presumably form the bulk of the Trump Organization's pass-through income, given its specialization in real estate, Trump book sales, and licensing of the Trump name and brand.

Also: to ensure larger businesses claiming the pass-through deduction actually employ workers (since the new law in its very title claims to promote job creation), the new law ties eligibility to the amount of W-2 wages the business pays. If the business doesn't pay enough in wages, it can't claim the full deduction. But in last-minute Congressional negotiations, a second qualifier for getting the full deduction was slipped in: the value of certain capital investments. That new qualifier highly favors established real-estate investors like President Trump.[55]

Access to the president's tax returns would allow the Ways and Means Committee to judge the impact of the new pass-through deduction on wealthy pass-through business owners like Donald Trump, as well as whether special exceptions to the deduction's general rules unfairly favored him. This review would help the committee decide whether the pass-through deduction should be reformed or eliminated.

Weakened Estate Tax

The estate tax, the only federal curb on the accumulation of dynastic wealth, is paid by only a tiny fraction of American families, estimated at just 1,700 in 2018.[56] The new Trump-GOP tax law doubled the amount excluded from the tax, from roughly $5.5 million for individuals and $11 million for couples, to about $11 million and $22 million, respectively. This weakening of the tax reduced its ability to narrow the nation's wealth gap and raise needed revenue.

Again, unless everything we know about the president's financial situation—including his annual financial disclosures—is a lie, the Trump family fortune exceeds the new exemption amount by millions or billions of dollars. Still, those higher exemption amounts mean his heirs would save around $4 million in estate taxes, assuming the estate pays at the 40% rate.[57]

The Ways and Means Committee should conduct a careful analysis of the Trump tax returns to determine the likely effect of the weakened estate tax on wealthy families. It should use the resulting data to deepen its understanding of how the new provisions work, how they will impact deficits and tax fairness, and whether the estate tax should revert to its former rules or perhaps be even further strengthened.

New Real Estate Exemptions

In a few instances, the new Trump-GOP tax law eliminated or reduced unfair tax breaks in the tax code, but even then, in at least two cases, the law created new exemptions benefiting real estate professionals like President Trump. Those two instances can be summarized as follows.

- **Ending Like-Kind Exchanges (Section 1031 Exchanges)**. Capital gains taxes are usually due when an asset is sold for more than it cost. But under prior tax rules, investors in tangible items could indefinitely delay paying the capital gains tax if they kept reinvesting the proceeds in another item—called a "like-kind exchange."[58] If those gains were continuously rolled over until the taxpayer died, they were never taxed at all.[59] The Trump-GOP tax law took a positive step by

closing the like-kind-exchange loophole[60] for real property, except that it also created an exemption for real estate investors like President Trump. The result is that everyday members of the public who own real estate will now have to pay capital gains taxes when they sell their property, but real estate pros like President Trump will continue to benefit from this handy way of avoiding taxes on their gains.[61]

- **Limiting Interest Deductions.** The Trump-GOP law took another positive step by requiring almost all businesses to accept new limitations on their right to deduct interest payments on their loans.[62] An exception was made for businesses with real estate investments, like the Trump Organization. President Trump has dubbed himself the "king of debt,"[63] and the best estimates are that he owes hundreds of millions of dollars in personal and business loans.[64] Yet neither he nor other real estate professionals will be subject to the new restrictions on interest tax deductions, forcing U.S. taxpayers to continue to subsidize these wealthy investors' debt.

As with the other tax changes discussed earlier, the Ways and Means Committee could use an analysis of how these preserved benefits help President Trump—an analysis only possible through access to his tax returns—to estimate their effect more generally on tax revenues and fairness.

Review of President Trump's tax returns would be even more helpful in investigating claims that he and his allies in Congress purposely carved out exceptions in the new law to specifically favor him. Since such suspicions of favoritism undermine public confidence in our tax system, they must be promptly and thoroughly addressed.

Reason 3: To Determine Whether President Trump Pays All His Taxes and the IRS Has Held Him Accountable for Any Shortfall in the Past and Can Do So Now

Before taking office, President Trump claimed the IRS audited his tax returns "almost every single year."[65] Because the IRS is legally prohibited from disclosing the tax status of individual taxpayers except in public enforcement proceedings, we don't know if that's true. And if true, we have no way of knowing about any findings, assessments, settlements or payments that resulted from such audits. (Like all recent presidents, while he's in office Trump's returns will be automatically audited every year.[66])

Congress and the American people have a right to know if President Trump has paid all the taxes he owes and, if not, whether the IRS has taken appropriate enforcement actions. By obtaining and reviewing Trump's tax returns, the Ways and Means Committee could find out.
In addition, a Ways and Means investigation into President Trump's taxpayer status, facilitated by access to his tax returns, could be educational. Congress and the public could learn important information about audits of wealthy Americans and sitting presidents: how audits are triggered; who within the IRS actually audits a president's tax returns; who represents the president during such matters; what happens if the president fails to cooperate with IRS information requests; how disputes are elevated and resolved within the IRS; and what role, if any, is played by the IRS Commissioner, a presidential appointee.

Depending on the facts uncovered, the committee could consider necessary reforms. Perhaps all audits, assessments, settlements and payments of sitting presidents should be made public; periodic public status reports should be filed by the IRS in the event of tax disputes with a sitting president; and special

arrangements made for a final decision-maker within the agency on matters involving a president's tax returns, with an IRS Commissioner nominated by the president under audit forced to recuse himself.

More important than facilitating the review of any ongoing or past audits of President Trump, access to his tax returns would allow the Ways and Means Committee to determine if there are any irregularities in his filings that would warrant audits and enforcement action.

In October 2018, the *New York Times* published a lengthy report on "dubious" tax avoidance strategies pursued by President Trump's family over the past half century, including what the paper declared to be "instances of outright fraud."[67] The Times story described a pattern of conduct by President Trump's father, Fred, as well as his heirs, that appeared to amount to deliberate tax evasion through several complex schemes. Among the principal allegations:

- Fred Trump severely undervalued assets transferred to his heirs to avoid paying hundreds of millions of dollars in gift and estate taxes.
- A shell company formed by the Trump family overcharged Trump properties for various expenses, thereby reducing the income reported by those properties and passing illicit profits to Trump family members without paying the taxes owed.
- Fred Trump disguised a $15 million gift to Donald Trump by purchasing a share in one of his son's buildings at market rates and then selling it back to his son at a tiny fraction of the purchase price.

The *Times* story alleges that President Trump was not merely a beneficiary of these tax-avoidance schemes, but an active participant in them.

As noted in the first section of this report, despite his wealth Trump has gone several years without paying any federal income taxes. There's yet another instance: long-time Trump chronicler David Cay Johnston determined that President Trump paid no federal income taxes in 1984, based on the findings by courts in two cases where he'd appealed (and lost) New York City and state tax assessments.[68] The judge in the city case noted with apparent disbelief that Mr. Trump had claimed huge business losses on his federal return even though he had no reported business income.

While it is not the role of Congress to pursue individual tax enforcement, it does carry the responsibility to evaluate how well the tax system is working: whether wealthy and powerful people are abusing the tax code or escaping IRS enforcement actions, and if so, what reforms are needed.

Research shows the American people view paying taxes as a vital civic obligation. A 2017 IRS Taxpayer Attitude Survey found, for example, that 88% of Americans believe it is "not at all" acceptable to cheat on taxes, while 95% completely or mostly agree that "it's every American's duty to pay their fair share of taxes." The survey also found that 89% of American taxpayers completely or mostly agree that "[e]veryone who cheats on their taxes should be held accountable."[69] The president is no exception.

During the Nixon Administration, it was discovered that the president had used improper deductions to pay less than a thousand dollars in taxes in years when he had more than $200,000 in income. If he hadn't resigned because of the Watergate scandal, the chairman of the House Ways and Means Committee at the time suggested this evasion might have been enough to force Nixon from office.[70]

In short, a final reason for Congress to obtain and review the Trump tax returns is to ensure that President Trump, like all other Americans, meets his legal obligation to pay taxes and cooperates with IRS oversight and enforcement efforts. Equally important is for Congress to ensure public confidence in the U.S. tax system by demonstrating that no one is above the law.

Reason 4: To Determine if President Trump has Hidden Business or Financial Conflicts of Interest that are Influencing His Policy Decisions

President Trump has been an investor and business owner for decades: buying and building hotels, condominium towers, casinos, golf courses and more in the United States and nations around the globe. Foreign nationals—including from countries with opaque and crime-ridden economies—are regular buyers of his luxury housing units and investors in his other projects.

Contrary to past practice by other presidents, President Trump failed to place his assets in a blind trust upon assuming office. Instead, he has maintained ownership of all his businesses and investments, though he claims to have transferred day-to-day management of them to his adult children.[71] His ongoing ownership and receipt of income from his worldwide business operations mean that he is aware of how his official actions as president impact his personal finances, raising the possibility of frequent and sharp conflicts of interest.

These potential conflicts could arise from both domestic and, more seriously, foreign investments.

Problematic Domestic Real Estate Investments

The most prominent potential conflict is mere steps from the White House: The Trump International Hotel on Pennsylvania Avenue, opened just a few months before Trump took office, is leased by his organization from the federal government. As owner of the hotel and head of the government, he is simultaneously tenant and landlord, immediately raising ethical concerns.

Of even greater concern is the potential for those wanting something from the government to ingratiate themselves with the president by patronizing his hotel. Conversely, Trump could encourage the continuing business of high-spending guests by providing government favors. The hotel—which features $100 cocktails and $500 rooms—has already become D.C.'s "new town square" where politicos and influence peddlers go "to get people to know you."[72]

Any quid-pro-quo would be illegal, but issues of national security also arise if the hotel patrons in question are, or work for, foreign nationals. (See section on Saudi Arabia, below.)

President Trump has been accused of influencing a government real estate decision to protect business at his hotel.[73] The FBI had planned to abandon its crumbling headquarters on Pennsylvania Avenue a block east of the Trump International. But according to Congressional Democrats—backed up by incriminating emails—the president blocked the planned move because he was afraid the valuable lot could be turned into a competing hotel.

For the past 23 years, Trump has leased a skyscraper in Lower Manhattan across the street from the New York Stock Exchange. His subtenants at 40 Wall Street have included a surprising number of accused and

convicted felons, the cases often involving breach of federal securities law.[74] Landlord Trump might be tempted to intervene in prosecutions by President Trump's Justice Department to avoid his tenants going to jail.

Access to President Trump's tax returns could help the committee judge the seriousness of these and other potential conflicts of interest involving domestic investments.

Foreign Investments: Russia

Russia is a long-standing U.S. adversary, stretching back to its days as the Soviet Union during the Cold War. American intelligence has concluded that Russia deliberately attempted to manipulate the U.S. 2016 presidential election.[75] Special counsel Robert Mueller has indicted 13 Russians as well as Russian organizations and businesses for that misconduct.[76] In response to those and other provocative acts, Congress has enacted legislation imposing a variety of sanctions on Russia, and is considering imposing more.[77]

In contrast, both before and after his election, President Trump has consistently defended Russia's actions, expressed open admiration for Russian President Vladimir Putin, and contended it is in the U.S. interest to work more closely with that country. He has done so despite harsh criticism even from within his own party for his inexplicable deference to Putin on matters of American security.[78] Questions have repeatedly arisen as to the reasons for President Trump's pro-Russian stance, including whether they result from hidden business or financial interests.

Those suspicions are not unwarranted. For more than 25 years, President Trump has sought and secured business deals and investments in Russia and with prominent Russians. In the late 1990s and early part of this century, for example, he engaged a Russian law firm to trademark various versions of his own name and that of his businesses.[79] In 2007, he traveled to the "Millionaire's Fair" in Moscow to promote Trump vodka.[80] In 2013, he brought his Miss Universe beauty pageant to Moscow, boasting that "almost all of the oligarchs were in the room."[81]

In 2008, his elder son and business partner, Donald Trump, Jr., was quoted as saying, "Russians make up a pretty disproportionate cross-section of a lot of our assets," adding that his family's businesses "see a lot of money pouring in from Russia."[82] In 2013, his other adult son, Eric, reportedly said, "We have pretty much all the money we need from investors in Russia" to finance Trump golf courses, although he denies making this statement.[83]

Buying high-end real estate for cash in Western nations—the type of deals offered by the Trump Organization—is a method favored by Russian oligarchs for offshoring their assets.[84] Cash purchases are also a way to launder money: proceeds from illegal activity are used to buy real estate, then that property is leased or resold, producing apparently untainted cash.[85]

According to a recent analysis by McClatchy, buyers with Russian or former Soviet Union connections bought 86 Trump-branded properties in Florida and New York in all-cash deals.[86] Most of the sales were of condominiums in buildings using the licensed Trump name rather than buildings owned or developed by the Trump Organization. But the Trump Organization received a licensing fee for each original sale and benefited from high prices in the aftermarket that helped to burnish the Trump brand. Several of the buyers

had disreputable backgrounds, including ties to Russian organized crime; some had been accused or convicted of crimes ranging from Medicare fraud to running illegal betting rings.[87]

Trump has also in recent years been using a lot of cash to invest in real estate, after decades as the self-proclaimed "King of Debt." Instead of relying on loans from banks, between 2006-14 he spent over $400 million of his own money on real estate deals, including 14 cash-only transactions.[88]

In February of this year, Sen. Ron Wyden, the ranking Democrat on the Senate Intelligence Committee requested information from the U.S. Treasury Department about a suspicious Florida real estate deal in which Trump doubled his money, pocketing over $50 million, through the sale of a Palm Beach estate to a Russian oligarch.[89] Wyden stated that it was "imperative that Congress follow the money and conduct a thorough investigation into any potential money laundering or other illicit financial dealings between the President, his associates and Russia."

In 2010, Trump partnered with the Russian-run Bayrock Group to build a hotel in New York.[90] Around the same time, Russians, including many with questionable backgrounds, were big buyers of units in a Trump-branded property in Panama.[91] According to the hotel and condo tower's chief salesman, the Trump Organization failed to exercise the due diligence necessary in a crime-infested nation to determine the sources of buyers' funds.

Aside from those and other business dealings, President Trump and Russia are also connected through a global financial institution, Germany's Deutsche Bank. After the Trump Organization's near collapse in the early 1990s, Wall Street largely stopped doing business with him. Only Deutsche Bank would lend money for Trump real estate developments.[92] When President Trump took office, he was reportedly hundreds of millions of dollars in debt to the German bank.

At the same time that Deutsche Bank was alone among major banks in lending to Trump businesses it was also, according to American and British regulators, facilitating a $10 billion stock-trading scheme that enabled some Russian clients to improperly move huge sums of money into offshore accounts, misconduct for which the bank was recently fined over $600 million.[93] In November 2018, German police raided Deutsche Bank offices as part of a money laundering investigation.[94]

President Trump is also under scrutiny for his possible connections to a Russian state-run bank, VEB, which U.S. investigators are examining because it helped finance a Trump building in Toronto.[95]

In November 2018, Trump's former personal lawyer Michael Cohen pleaded guilty in federal court to lying about how long his client was involved in trying to build a luxury high-rise in Moscow. Trump began pursuing the deal in Sept. 2015 and Cohen admitted Trump had continued to try to make the deal until June 2016, as he was locking up the GOP presidential nod during the primaries and nearly to the eve of the Republican national convention that summer when he was formally nominated. Correspondence made clear that The Trump Organization would need the Russian government to help it obtain financing from a Russian bank. There was also discussion during this time among Trump and his advisers of giving Russian President Putin a $50 million penthouse suite.[96]

None of these past dealings tells us whether and to what extent President Trump has current business or financial connections in Russia or with Russian nationals, ties that may be influencing U.S. policy decisions. A letter released by his lawyers in May 2017 denying any such ties used careful language to limit the scope of the denial and thus left many questions unanswered.[97] One way to help resolve those questions would

be to review the Trump tax returns, including those of the 500 or more businesses that make up the Trump Organization, to identify evidence of any current Russian business dealings, holdings, or financial interests.

Foreign Investments: Saudi Arabia

American intelligence has by all accounts determined that the *de facto* head of Saudi Arabia, Crown Prince Mohammed bin Salman, ordered the brutal murder of Jamal Khashoggi, a journalist who resided in the United States and had become a high-profile critic of the Saudi regime.[98] The killing took place on the grounds of a Saudi embassy in Turkey, thus compounding the crime by violating the traditional role of embassies as places of refuge, not murder.

President Trump has increased American military aid to Saudi Arabia in its brutal war in Yemen, which has left thousands of civilians dead and in which the Saudis are accused of using famine as a weapon.[99] This runs counter to the trend of American allies in Europe, many of whom have cut off weapons sales to the kingdom in revulsion at Saudi abuses.[100]

Congress has in recent years been increasingly critical of Saudi Arabia: it voted to allow 9/11 victims to sue the kingdom because of its alleged support of the terrorist attack, and has considered legislation to sanction it over the Yemen war.[101]

In contrast to the U.S. intelligence community and our allies, President Trump has become one of the most vocal defenders of Saudi Arabia. His ongoing willingness to absolve Saudi Arabia of culpability in the Khashoggi murder—just on the kingdom's say-so—conflicts with the stance of nearly all other American political leaders of both parties.[102] His warnings that sanctioning Saudi Arabia would endanger U.S. arms sales, jobs, and profits have been an abrasive counterpoint to voices warning against global acceptance of Saudi Arabia's open violation of international laws and norms.[103]

Frustrated by President Trump's inexplicable embrace of the Saudi kingdom, two-thirds of the Senate voted in November 2018 to consider limiting his ability to support the Saudi war in Yemen.[104] In December, in what would be a stunning rebuke to any president, the Senate gave final bipartisan approval to imposing those limits on his war-making powers in Yemen and, in a separate, unanimous vote, officially blamed the Saudi crown prince for Khashoggi's murder.[105]

As with his approach to Russia, questions have arisen as to whether President Trump's pro-Saudi stance may be influenced by his business or financial dealings with the country rather than a diligent pursuit of the public interest.

When he was nearly broke in the early 1990s and selling off assets to raise cash, a Saudi prince supplied Mr. Trump with tens of millions of dollars by buying his yacht and later joining in a group that took the Plaza Hotel off his hands.[106] In 2001, he sold an entire floor of one of his buildings, across from the United Nations, to the Saudi Arabian government for $12 million. In 2015, soon after declaring his candidacy for president, the Trump Organization created eight companies whose names implied an intention to do business in the Mideast kingdom. (The Trump Organization has since declared that it shut down those Saudi-focused entities after President Trump won the election.)

At a campaign rally in 2015, Trump stated: "Saudi Arabia, I get along with all of them. They buy apartments from me. They spend $40 million, $50 million. Am I supposed to dislike them? I like them very much."[107]

The Saudis have continued to be a reliable source of income for the Trump Organization even after President Trump's move to the White House. A Washington lobbying firm that represents Saudi Arabia spent about $270,000 at Trump's D.C. hotel from Dec. 2016 through Feb. 2017.[108] The firm shifted to Trump's luxury hotel from one in Virginia shortly after he was elected, paying for an estimated 500 nights.[109] The lodging and catering fees were part of an effort to overturn a law that allows victim families to sue Saudi Arabia for its role in the 9/11 terrorist attack.

Maryland and the District of Columbia last year sued President Trump, claiming he's violating the U.S. Constitution's ban on "emoluments" because of the payments his D.C. hotel receives from foreign governments like Saudi Arabia.[110] A federal judge in July of this year allowed that suit to proceed,[111] and in December ordered the discovery phase of the case—the taking of sworn statements and provision of documents—to begin before the end of the month.[112]

Foreign Investments: Other Nations

Researchers have identified dozens of other countries in which Trump's business dealings could create conflicts of interest with his official duties.[113] Leading examples:

- The Philippines, where the developer of a Trump-licensed, $150 million Manila high-rise was appointed that country's trade envoy to the U.S. by the Philippine president, another ruthless strong man Trump seems to admire.[114]
- Turkey, where Trump himself admitted he had "a little conflict of interest" because of his business ties, including Istanbul twin towers bearing his name—ties that seem to have influenced his approach to this key Mideast ally.[115]
- The United Arab Emirates, where Trump has lent his name to a golf resort and the local developer's son—an honored guest at Trump's inauguration—wrote on Instagram that he and the rest of the world were "looking forward to a lucrative 8 years ahead."[116]

Media reports and speculation, however careful or widespread, are no substitute for Congressional oversight. Obtaining President Trump's tax returns would be the best way to determine what in this sprawling circumstantial case for improper foreign influence has merit and needs addressing.

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Mr. DOGGETT. Thank you for your tolerance.

Chairman LEWIS. Now it is my pleasure to recognize the gentleman from California, Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman. I appreciate this opportunity, and thank you for letting me sit in on this hearing. I appreciate that.

Gentlemen, thank you very much for being here today as well as your preparation for your testimony today too.

As you heard from one of my colleagues, and as you know well, there is no law requiring a taxpayer to turn over the tax returns to this Committee, correct, Mr. Yin?

Mr. YIN. You are referring to the President?

Mr. PANETTA. Yes.

Mr. YIN. There is no law that requires that, that is correct.

Mr. PANETTA. But there is a law saying that this Committee can obtain those tax returns, correct?

Mr. YIN. That is correct.

Mr. PANETTA. Okay. And that is 6103, subdivision F, subdivision 1, correct?

Mr. YIN. That is correct.

Mr. PANETTA. And it actually says that any taxpayer shall furnish the tax returns to the Committee, correct?

Mr. YIN. It says the Treasury Secretary shall furnish the requested information to the Committee.

Mr. PANETTA. Exactly. So that is not a should or a could have or a would have. It is a shall. It must if we ask for that, correct?

Mr. YIN. That is correct.

Mr. PANETTA. Okay. Great.

And, Mr. Yin, I am going to focus on you. Gentlemen, please excuse me, but I am going to focus on Mr. Yin, if that is okay.

In your testimony, Mr. Yin, you basically talk about—on page 2, you talk about—this is your formal written testimony—you talk about the situation where there would be a refusal to turn over these tax returns in this situation that we have been talking about and that most likely you say that it would lead to the courts. It would be a potential judicial resolution, as you say, correct?

Mr. YIN. It might. It depends on how the Congress reacts to that refusal. Obviously, Congress could simply say, well, okay, that is too bad. Or Congress could try to enforce its request, and that might end up in court.

Mr. PANETTA. Understood. And if it went to a court, what is your—how do you think these courts would look at that situation? What would they use?

Mr. YIN. Well, again, as I indicated in the testimony, I think we are in unchartered territory, because I don't think the specific issue has ever arisen before, at least I am not familiar with it. But there is a little bit of law about enforcing congressional subpoenas, and this would be somewhat analogous to that. And the law generally says that Congress must act with a legitimate legislative purpose.

Mr. PANETTA. And in regards to the case law that talks about a legitimate purpose, can you go into a little bit more detail behind those words?

Mr. YIN. Yes, I would be happy to. So the foundational case was an 1880 case, the Kilbourn v. Thompson case. And that involved

a situation where Congress was making an investigation relating to a bankruptcy. And there was a settlement, and there was a particular company that was affected by it. And the congressional inquiry essentially went to the nature of that.

The party that was being subpoenaed refused, and so this eventually went to the Supreme Court. And the court found that it could not find any legislative purpose for this inquiry. The court said there is no legislation envisioned in this conflict that has arisen. And, in fact, the court said, we can't even imagine how there would be any legislation relating to it. It said, essentially, if this is a conflict, it is a conflict for the courts. It is a conflict for the judicial branch to resolve, not the legislative branch to resolve. And in that instance, the court concluded that the legislative inquiry was not going to be enforced.

Mr. PANETTA. Okay.

Mr. YIN. There are other examples, obviously, I can give you.

Mr. PANETTA. Please, in regards to any that have been enforced.

Mr. YIN. Yes. Certainly. Well, so in 1927, there was another Supreme Court court case, the McGrain v. Daugherty case. Daugherty, in this particular case, was the brother of the former attorney general, Harry Daugherty. Harry Daugherty had been one of the principals allegedly involved in some of the Teapot Dome matters.

And in this instance, Congress was seeking testimony and documents from the brother of Harry Daugherty to, again, complete the investigation of this. And the brother refused. So this also went to the Supreme Court. And in that case, the court made it very clear that there was an appropriate legislative purpose to investigate the possible wrongdoing in the executive branch and, therefore, did enforce that request.

Mr. PANETTA. And these are the types of cases you believe that courts will look at for precedence, correct?

Mr. YIN. Well, again, it is speculation on my part. But it would be—I would think, if I were a judge or the clerk for the judge, that would be certainly an area that I would direct the attention to.

Mr. PANETTA. Thank you.

I yield back my time. Thank you again, Mr. Chairman.

Chairman LEWIS. Thank you.

The chair now recognizes for 5 minutes Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

This has been a very insightful panel, and I appreciate the testimony of the witnesses.

But as I venture down my questioning, I just want to make sure we are clear. I have heard from each one of the witnesses that there is a right-to-privacy issue here based on the historical review of the documents from each of their testimony. Does anyone disagree with the issue or concern that is legitimate being raised on the rights of privacy of individuals under 6103 or this proposed law, and that we need to take that into consideration? Does anyone disagree with that? Mr. Yin.

Mr. KIES. One thing I would say in response to that, and it is something that no one on the Committee has asked about yet, but I think it is an important piece of information. 6103 has never ever

been used to request taxpayer information by the Ways and Means chairman, the Finance Committee chairman, or the chief of staff of the joint committee that has been released publicly.

Professor Yin referred to the Nixon situation. Nixon had agreed to let his return.

When I was chief of staff of the joint committee in 1985, we requested individual income tax returns in connection with our study of why wealthy Americans were giving up their citizenship. That return information was never released to the public.

So we can debate whether or not the authority exists, but what is not in debate is it will be unprecedented if that authority is used to release taxpayer information.

Mr. REED. And, Mr. Yin, so do you disagree that there is no——

Mr. YIN. Yes, I—so I disagree with that response——

Mr. REED. No, not with—I have limited time.

Are you concerned about the right of privacy that is being raised here? Do you think there is no right of privacy to anyone?

Mr. YIN. Yes. I believe there is a balancing between the right of privacy of individuals and the right of the public to know. And it is up to the Congress to determine how to strike that proper balance.

Mr. REED. How to strike that, right? And that is exactly what we are wrestling with.

So the issue I have, because when I heard you testify to, I think it was John Kerry's wife, Geraldine Ferraro's husband who was concerned about their privacy, they didn't run for public office, right? They didn't venture down this public domain path that their husbands or spouses did, wives did.

So the question I have for you is that if you get a Presidential return that shows the President having a relationship with Mrs. Jones down the street, Mrs. Jones' privacy right needs to be respected, correct? She has a privacy right, that her information that because she happened to do business with an individual who happens to run for President, unbeknownst to her, 10, 20, 30 years, 10 years down the road, 5 years down the road, her right needs to be respected in this conversation, correct?

Does anybody disagree with that?

Mr. ROSENTHAL. I agree. Yes, her rights should be respected.

Mr. REED. Yes. So the issue that I am wrestling with here is, is there a better way to do this? Because, Mr. Bookbinder, you are very familiar with our financial disclosure statements. You offered testimony that said, you know, what we can't find from this financial disclosure, if it is a $6 million deal or a $600 million deal, that is potentially a conflict of interest. But isn't that irrelevant?

The fact on the financial disclosure, it discloses the relationship upon which the conflict arises. So if the financial disclosure shows that, regardless if it is a dollar or a trillion dollars, it is still a conflict that can be investigated, and that information is out there. Isn't that correct?

Mr. BOOKBINDER. I think that is correct. But there are likely to be relationships that are going to be shown in the tax returns that are not shown in the financial disclosures. And certainly, when—privacy is incredibly important. But when somebody chooses

to run for President, they give up lots of pieces of their right to privacy.

Mr. REED. So, Mr. Bookbinder, you just teed up exactly what I think may be a wiser course for this Committee to pursue, is if there is a concern about the financial disclosure and the information that that President or that vice presidential candidate, or any candidate who runs, if that individual chooses to do that, isn't that the more appropriate vehicle for us to be considering legislation to say, look, if you are running for President, we want your own form under the financial disclosure information, we want you to fill out all of these issues? Rather than run the risk of some Mrs. Jones' privacy being violated because someone wants to get a tax return.

I don't challenge Mr. Neal's integrity in regards to his authority to use 6103. He is a gentleman. I respect him. But I am concerned about the next Ways and Means chairman or the next political battle that is—chooses to utilize this weapon that could potentially be abused by a future chairman or any chairman.

So shouldn't we focus our time on what actually could potentially bring Members like me from the other side to say let's amend the financial disclosure reforms, target the information to that form for that individual, and at the same time we respect the privacy of individuals that had nothing to do with running for President or vice president?

I will let you ponder that.

And with that, I yield back.

Chairman LEWIS. The chair now recognizes for 5 minutes Mr. Kelly.

Mr. KELLY. Thank you, Chairman. And, again, thanks for holding the hearing. All the panelists, thanks for coming in today.

I want to go back to what Mr. Reed said, Mr. Bookbinder, would you clarify for me, so when somebody runs for President, they give up their expectations of privacy? Is that what——

Mr. BOOKBINDER. Well, I think anyone who runs for President expects to have a lot less privacy than most individuals.

Mr. KELLY. Okay. So anybody that is a candidate for President or serves in the office is an American citizen. Is that correct?

Mr. BOOKBINDER. Yes.

Mr. KELLY. Okay. So are we saying if you reach a certain level, even though you are an American citizen, you are subject to greater scrutiny than anybody else? And then my next question would be: So at what point do people say are you kidding me? Why would I ever run for any of these offices? It makes no sense.

I don't want you to even answer that because I know what the answer is. But I want to really be clear. And I want each of you to say, and I want an answer. I am not—this may be—and I really appreciate your opinions. But you know what, may doesn't answer the question, because every time we ask you a question, well, this may be what happened, that may be what happened.

Do the President and the vice president, not undergo the scrutiny of having their tax returns audited by the IRS?

Mr. Thorndike, Dr. Thorndike. It is just a yes or no.

Mr. THORNDIKE. Yes.

Mr. KELLY. Okay. They do.

Professor Yin.

Mr. YIN. The internal revenue manual——

Mr. KELLY. The question is—it is a yes or no, Doctor. I appreciate that, but we are going to run out of time.

They are audited, are they not? Are not the President and the vice president audited for tax returns?

Mr. YIN. The internal revenue manual does require it. Whether they in fact——

Mr. KELLY. Okay. I know you don't sit on it, so you can't be sure. But you know what the answer is.

Mr. Rosenthal.

Mr. ROSENTHAL. I have the same response.

Mr. KELLY. You don't know either. Okay.

Mr. Bookbinder.

Mr. BOOKBINDER. I believe so, but I don't think it addresses all the issues——

Mr. KELLY. Okay. Mr. Kies.

Mr. KIES. Yes.

Mr. KELLY. Okay. Thank you. I am glad we had experts here that could maybe know but couldn't really know.

I just want to be clear on this. Listen, this would not be taking place if we were not about a duly elected President by the name of Donald Trump sitting in that office. This is an incredible overreach. This is an oversight Committee. Our very role is to be the watchdogs to make sure that American citizens are protected.

Now, if I were to go home to my hometown and walk up to somebody and say, I don't know that you realize it, but you know what, this 6103 is something right now that we really have to look at. And they are going to look at me, like, I have absolutely no idea what you are talking about. I would say in too many cases we have absolutely no idea what we are talking about or what we are leading to. This, I said earlier, is a Pandora's box. You take the lid off this, and you make anybody subject to this type of scrutiny.

And it is hard for me to believe that since the mid 1970s when we had the Watergate fiasco, that the changes to the IRS then, especially what happened under President Nixon, that we are saying today, that this many years later, that we are just not sure that the IRS really knows how to do their job.

I can remember not too many years ago—Mr. Reed, you sat here with me, whenever we talked about Lois Lerner. We questioned whether we thought the IRS was doing the right job of what was happening and the weaponizing of the IRS. We were told, listen, are you telling us you don't believe the IRS knows what they are doing. Now, that was not done by our side of the aisle, by the way. It was the other side of the aisle that said you can't possibly question the integrity of the IRS, and I do not question their integrity.

Look, if there is better ways to do things, I think Mr. Reed hit on so many. I mean, this isn't the financial disclosures. If there are loopholes, if it is too wide, why not narrow it down?

And one of the Members said this is not lazy legislation what we are doing. Well, if it is not lazy legislation, I guess we can find some other term for it. It sure as heck is not doing our job as legislators. If there is some confusion, then we need to straighten it out.

There are better ways to do it. I understand that. As far as the trust and the faith the American people have, each one of us got

elected for this very purpose, to protect their freedoms and liberties and their privacy. It is not to go after a political person that we just don't care for.

Mr. Kies, am I missing something here tonight? I mean, you answered things pretty explicitly. And I know you all have this great deal of background. But when you can't say you know for sure that the IRS knows how to do an audit or if they are doing the audit, that is troubling to me. What else would you do? What else could we do to make this process better?

Mr. KIES. Well, I actually think what Mr. Bookbinder has talked about is a more productive route of identifying the kind of information that you really want here, which is a more vigorous financial disclosure for people running for President. And you can steer clear of having to delve into releasing individual tax returns, which has never ever been done under Section 6103. And it is not a route that I think you should think about going down unless you are very, very careful. And, frankly, I think if there is other ways to get the information, it is much better to go in that direction.

Mr. KELLY. Okay.

Dr. Yin, you had something to say.

Mr. YIN. I would just like to correct the record on that, because Mr. Kies has made the statement twice. He seems to have forgotten that both in 2014 and in 2015, 2014 in the House Ways and Means Committee, 2015 in the Senate Finance Committee, there was the use of exactly the authority we are talking about now combined with a public disclosure in each instance.

Mr. KELLY. That was during a criminal investigation. Is that right?

Mr. YIN. It was——

Mr. KELLY. Yeah. Okay. It was. Thank you.

Listen, I wish we had more time. I would really love this could go on for a long time. I know I share the same feelings as the chairman. Thank you so much for giving us your time and your expertise in weighing in on this.

Let's make sure as we leave this room today, we are the oversight Committee. Our main role is to protect the privacy and the rights of every individual American citizen, of which our President happens to be.

Mr. KIES. I would just add one thing. I agree with what George just said. What I would say is it has never been legally used. George and I both agree that what was done in 2014 and 2015 was inconsistent with 6103. This Committee and—has never legally released an individual tax return under the authority of Section 6103.

Mr. KELLY. It sounds like you and George get together a lot and discuss this. So thank you so much for your time.

Chairman LEWIS. Let me just say to the Ranking Member, my friend, Mr. Kelly, it is my strong belief that the American people have a right to know. We live in a democratic society. We should know people running for office, the office of President and vice president, how they earn their money and what conflicts they have. So the hearing—this is not the end. This is just the beginning.

I want to thank each member of the panel for your participation, for your contribution.

Please be advised that Members have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record.

With that, the Subcommittee on Oversight stands adjourned. And thank you again.

[Whereupon, at 5:34 p.m., the Subcommittee was adjourned.]

[Submissions for the Record follow:]

Testimony of Congresswoman Anna G. Eshoo
California's 18th Congressional District
Ways and Means Committee, Oversight Subcommittee
Hearing on "Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns"
February 7, 2019, 2:00pm, Longworth 1100

Mr. Chairman, thank you for holding today's hearing on this critically important issue of tax transparency. I welcome the opportunity to provide written testimony to the Committee about my legislation, the *Presidential Tax Transparency Act*.

I first introduced the *Presidential Tax Transparency Act* in June, 2016 during the presidential election. For decades, presidential candidates of both parties voluntarily released their tax returns to the American people, but in 2016 this bipartisan tradition was abandoned. Donald Trump refused to release his tax returns, falsely claiming he could not do so because the IRS was "auditing" his taxes. Bernie Sanders also resisted releasing his tax returns, eventually releasing only a single year's return. Their decision to ignore this tradition proved that we could no longer rely on voluntary disclosure, and it is why I introduced legislation to make disclosure required by law.

Like many norms regarding ethics in government, this tradition began in the Watergate era. As the Watergate scandal unfolded, the American people learned that among other illegal activities, President Nixon had avoided paying over $400,000 in taxes. He initially refused to allow his tax returns to be scrutinized by the IRS or the public, but as the details of his tax avoidance leaked to the press and public pressure mounted, Nixon disclosed five years of tax returns and directed Congress to study them to determine if he broke the law.

It was in response to public demands for transparency about his taxes that Nixon famously said, "People have got to know whether or not their President is a crook. Well, I'm not a crook." Nixon resigned less than a year later, but he created a precedent for future presidents and presidential candidates to do the same because the American people expect those who hold our country's highest office to be open and transparent about their finances. Although Gerald Ford released only a summary of his tax returns, every Democratic and Republican nominee for president between 1980 and 2012 released at least one year of tax returns, according to the Tax History Project.

The disclosure of a presidential *candidate's* tax returns is particularly important because the American people should be able to vet their finances *before* the election. Tax returns contain vital information such as whether a candidate has paid any taxes; what assets they own; if they've borrowed and from whom; whether they've taken advantage of tax loopholes and offshore tax shelters; and whether they have foreign bank accounts. They also provide insight into how the candidate's policy proposals would affect their personal finances. Only a full release of tax returns can provide the public with clear information about potential conflicts of interest or entanglements with foreign governments or businesses.

Although the current president has not released his tax returns, what we do know about his finances makes a powerful case in favor of disclosure. Last year, a stunning *New York Times* investigative report revealed that President Trump received millions from his father—the equivalent of $413 million in today's dollars—over many years, but he avoided paying millions in taxes on this inheritance through complex financial arrangements and questionable tax loopholes which some experts say could constitute tax fraud. The President's continued refusal to make his returns public and his conflicting and false reasons for claiming he cannot do so beg the question of what he is hiding in his finances from the American people.

There is no doubt that President Trump's lack of transparency about his finances and the credible allegations of tax fraud justify efforts in Congress to obtain his tax returns, and this Committee has the authority to do just that. However, regardless of what this president's tax returns may reveal, his refusal to voluntarily make them public has demonstrated the need for Congress to write this bipartisan disclosure tradition into law.

My legislation, the *Presidential Tax Transparency Act*, requires the sitting president and vice president to release ten prior years of tax returns and all future presidents and vice presidents to release their returns annually. Importantly, it also requires all future candidates for both offices to release their tax returns for the previous ten years within 15 days of receiving their party's nomination.

Members of both parties should agree that truth and transparency are not partisan issues. President Trump must be held to the highest standards of transparency that his predecessors set, and every subsequent president and nominee—Democrat and Republican—must also be held to that same standard. The American people deserve to see a presidential nominee's tax returns before an election so they can be confident when casting their vote that their next president will work solely in the interests of the American people and not their own financial gain.

THURSDAY, FEBRUARY 07, 2019

POSTED BY MICHAEL BINDNER AT 2:00 PM

Presidential and Vice-Presidential Tax Returns

As the Committee and Subcommittee know, Chairman Neal can request the tax return of anyone, including President Trump. Usually, this is unnecessary because it has become the custom. President Nixon did so in a publicity stunt to show he was "not a crook." I am certain that, because Citizen Trump is likely the target of more than one investigation, that Special Counsel Mueller has already obtained his returns.

In this instance, I advise Mr. Neal to withhold on seeking Citizen Trump's returns until doing so will support the likely work of the Judiciary Committee in investigating the possibility of impeachment. They should not be released for public consumption or until they are material to an impeachment vote or Senate trial and not for public curiosity. The desire for some to do so has amounted to grandstanding that should not be dignified by the Committee.

For the purposes of this hearing, allow me to paraphrase the judicial axiom, hard cases make bad law. I would urge that we take great care in requiring what has been customary. While it might have given Candidate Trump pause before entering the race, hindsight is 20/20. Given his conduct in office, it is likely he would have filed suit and pursued election anyway. Given what we know of his business dealings, he seems oblivious to the past or to the authority of law.

Requiring the release of returns for a candidate for federal office skirts dangerously close to adding to the constitutional requirement for serving. The Court in *U.S. Term Limits v. Thornton* (citation omitted) found that extending such limits was unconstitutional. Mr. Trump may have actually had a case.

There is also the slippery slope argument. (While it is a logical fallacy to make such arguments, in this case, it applies). While Presidents and their Administrations have, from time to time, engaged in criminal behavior, the sad fact is that members of Congress are not immune from such conduct. If subject legislation is passed, or likely before, many will call for the release of the returns of sitting members of Congress and their opponents.

It need not stop there. Currently, there are IRS Statistics on Income Publication *SOI Tax Stats – County Data* is incomplete for the highest income levels because their release would be traceable to individual filers. As a tax scholar who proposed a high income and inheritance surtax, I would find free access to data at all income ranges quite useful to

my analysis. Indeed, expanding publication to this area has actual public policy benefits apart from criminal investigations.

The question then remains, why stop now? If one citizen can be forced to release their personal tax information to the public, all citizens could one day be subject to such disclosure. Indeed, it would come up with every background check for applicants and employees. This information would be valuable to employers to make sure no outside income exists beyond the usual ethics disclosures.

The standard objection to privacy concerns is that no one should refuse disclosure if they have nothing to hide. That is the justification for any witch hunt (sadly, in this case Citizen Trump is correct in his characterization, at least regarding this matter).

I trust that you can divine my feelings about this matter.

215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

February 7, 2019

U.S. House of Representatives
Ways & Means Committee Oversight Subcommittee
1139E Longworth House Office Bldg.
Washington, D.C. 20515
Via email to: W&Mdem.submission@mail.house.gov

Re: Public Citizen Statement for the Record in Support of Disclosure of Presidential and Vice Presidential Tax Returns

Dear Chairman Lewis and Honorable Members of the Subcommittee:

On behalf of Public Citizen's 500,000 members and supporters, we write to express our wholehearted support for disclosure of the tax returns of presidents, vice presidents and covered candidates for those offices. In addition to advocating for passage of the For the People Act (H.R. 1), the sweeping ethics, campaign finance and voting rights reform package-- both as Public Citizen and as a part of the diverse Declaration for American Democracy coalition-- as it moves through a number of committees, we also urge that the Ways & Means Committee use its powers granted under Sec. 6103(f)(1) of the Internal Revenue Code to request President Trump's tax returns from the Secretary of the U.S. Treasury Department.

H.R. 1 embodies the newly-elected Congress' promise to the nation to ensure that public officials work for the people by cleaning up corruption and holding government accountable. Among the far-reaching reforms contained in the bill is Title X, requiring disclosure of presidential and vice-presidential individual income tax returns, including those of covered candidates for those offices. While this would be a vast improvement on the status quo, it may leave Congress and civil society unable to fully analyze the myriad conflicts of interest that have plagued this administration helmed by a wealthy president who has not truly divested himself from his business investments.[1] Therefore, Public Citizen supports expanding the language of H.R. 1 to include a mechanism for disclosure of business-related returns as well. For example, H.R. 1 could be extended to require that candidates for the office of president and vice-president, as well as eventual office holders, disclose the returns for any entity for which the person is a beneficial owner, meaning he

[1] PUBLIC CITIZEN and CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, TRUMP-PROOFING THE PRESIDENCY: A PLAN FOR EXECUTIVE BRANCH ETHICS REFORM (Oct. 2, 2018), https://bit.ly/2RdMAAp.

or she exercises control over the entity or has an interest in or receives substantial economic benefit from the assets of the entity.[2]

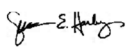
The Ways & Means Committee, however, must not wait until H.R. 1 is signed into law, and all Presidents have a legal requirement to disclose this information, to move forward with gaining President Trump's tax returns. The American public has been clamoring for this information since Donald Trump announced his candidacy for office, and his refusal to disclose this information despite decades of precedent set by his predecessors has intensified the real and apparent conflicts of interest posed by the intersection of his personal business affairs and the policies he has been advancing in his official office. For example, Trump owns hundreds of businesses, most of which are organized as limited liability companies (LLCs).[3] Under the Tax Cuts and Jobs Act, most LLCs and other companies organized as "pass-through" entities received an extremely generous new deduction.[4] Until the Ways & Means Committee uses its authority under Sec 6103 of the Code[5] to gain access to Trump's individual and business tax returns, you will be unable to provide proper legislative oversight into exactly how much he personally financially gained by pushing for those changes and signing the bill into law.

More than 11,300 of Public Citizen's supporters recently took action to call on Congress to use its authority to seek Trump's tax returns. This was in addition to the tens of thousands more who urged Trump to voluntarily release his returns shortly after his election to office, including countless activists who took to the streets during Tax March to demand disclosure of the returns. We urge you to listen to the will of We the People and investigate the extent of Trump's conflicts of interest as related to his income and business profits and the taxes he has or has not paid in recent years.

The outcome of last year's election made it clear that Americans are no longer willing to tolerate a government rife with self-dealing and ethical scandals. Addressing these problems means doing everything you can to advance H.R. 1 into law and extending Title X to include business-related returns. Additionally, this means acting swiftly in the interim to use Sec. 6103 authority to provide this Committee with the tax return information it needs to carry out its oversight function and provide checks and balances to the president and the rest of the executive branch.

Sincerely,

Lisa Gilbert
Vice President of Legislative Affairs
Public Citizen



Susan Harley
Deputy Director
Public Citizen's Congress Watch division

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[2] See Public Law No. 115-91. https://bit.ly/2SAgUZe
[3] MIKE TANGLIS, PUBLIC CITIZEN, PRESIDENT TRUMP, INC. (Sept. 5, 2017), https://bit.ly/2UIw1NK.
[4] Marielle Segarra, *Confusion Reigns for Some Businesses Over "Pass-Through" Deduction*, MARKETPLACE (Jan. 14, 2019), https://bit.ly/2RIK6sL.
[5] George K. Yin, *Congressional Authority to Obtain And Release Tax Returns*, TAXNOTES, (Feb. 20, 2017), https://bit.ly/2MvQ5U0.

February 7, 2019

Ways & Means Committee Subcommittee on Oversight
1139 E. Longworth House Office Building
Washington, D.C. 20515
Via email to: W&Mdem.submission@mail.house.gov

RE: Submission of Frank Clemente, Executive Director, Americans for Tax Fairness, Regarding Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns

Dear Chairman Lewis and Subcommittee Members:

Americans for Tax Fairness (ATF) is a coalition of 425 national, state and local endorsing organizations dedicated to creating a tax system that works for all Americans**.** This written submission urges the Ways and Means Committee to do two things:

1. **Support Title X, "Presidential And Vice Presidential Tax Transparency," of H.R. 1, the "For the People Act of 2019."** Title X would require the president and vice president, as well as major-party candidates for those offices, to disclose their last 10 years of federal income tax filings. We urge the committee to amend Title X to clarify that in addition to requiring disclosure of personal tax returns, you also require disclosure of tax return information of related entities, such as those directly or indirectly managed or controlled by the officeholder or candidate, including businesses and trusts.
2. **Expeditiously move to acquire President Trump's tax returns using the authority granted under 26 U.S. Code § 6103(f).** It seems certain that the Administration will strongly resist releasing the president's tax returns, which could set up a legal challenge that might last months if not past the 2020 election.[1]

Accompanying this submission is a report by our organization, "The Case for Congress Obtaining Trump's Tax Returns," which provides detailed support for these two recommendations.[2] The report makes the case that President Trump's tax returns would be invaluable tools for two distinct and equally important investigations:

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[1] Politico, "The plan to keep Trump's taxes hidden," February 5, 2019.
https://www.politico.com/story/2019/02/05/trump-tax-returns-congress-strategy-1145767
[2] Americans for Tax Fairness, "The Case for Congress Obtaining Trump's Tax Returns," January 3, 2019.
https://americansfortaxfairness.org/wp-content/uploads/ATF-The-Case-for-Congress-Obtaining-Trumps-Tax-Returns-12-18-18-FINAL.pdf

1. As guides to the complex financial structures and tax loopholes used by the wealthy, including President Trump, to determine if they are avoiding their fair share of taxes through unfair special breaks, and how laws should be reformed to stop such tax avoidance and/or evasion.
2. As the best source of answers to vital questions about Donald Trump's presidency, including whether there are any conflicts of interest and/or foreign influences that could be adversely affecting his exercise of official duties.

For 40 years, all major party presidential candidates except one (Gerald Ford, who released a summary of his tax data) have voluntarily released their tax returns, some going back as far as 30 years. They understood that the public deserves to know if the person seeking election to the highest office in the land has evaded tax laws, has questionable financial entanglements or debts, or has conflicts of interest that might affect their ability to serve. Until now, legislation to require candidates to release their taxes wasn't needed.

But by failing to follow precedent, then-candidate and now-President Trump has made necessary the legislation under consideration today. His refusal to release his tax returns during the campaign, and in the years after election, has denied Americans the answers to some crucial questions: How much, if anything, has he paid in federal taxes to support the nation he leads? Do any of his businesses or investments conflict with his duties as president, or even endanger national security? How much has he or his businesses been personally enriched by the actions he has taken as president—especially passage of the Tax Cuts and Jobs Act in 2017?

Getting answers to these questions is likely why the public feels so strongly about this matter, as shown in two recent polls:

- By a **margin of 60% YES (48% strongly) to 35% NO (26% strongly)** a sample of 1,001 adults responded to this question: "Do you think the Democrats in the U.S. House of Representatives should or should not use their congressional authority to obtain and release Trump's tax returns?" ABC News/Washington Post poll (January 27, 2019)[3]

- By a **margin of 63% ALLOWED, 37% NOT ALLOWED**, a sample of 1,407 registered voters responded to this question: "Should incoming House Democratic leadership be allowed to get President Trump's tax returns and make them public, or should they not be allowed to do so?" Harvard CAPS/Harris poll (December 3, 2018, p. 216)[4]

[3] ABC News/Washington Post poll, "Six in 10 Back Democratic Inquiries – Including Release of Trump Taxes," January 27, 2019. https://www.langerresearch.com/wp-content/uploads/1204a2TrumpInvestigations.pdf
[4] Harvard CAPS/Harris poll, "Monthly Harvard-Harris Poll: November 2018," December 3, 2018, p. 216. https://harvardharrispoll.com/wp-content/uploads/2018/12/HHP_November2018_RegisteredVoters-Topline.pdf

Ironically, the very candidate and president who made Title X of H.R. 1 necessary may not be governed by it. Given the current political control of the U.S. Senate and the unlikelihood of President Trump signing H.R. 1 even if it were somehow to pass the other body, Title X will be unable to force disclosure of the presidential tax information the committee needs most and needs right now. Therefore, it is not enough to expand the power of the federal government to enforce tax transparency among future presidential and vice-presidential candidates and officeholders by approving Title X of H.R. 1. It is also crucial to expeditiously use your committee's power to obtain the tax returns of President Trump.

Under 26 U.S. Code § 6103(f), the chairman of the Ways & Means committee (along with the chairs of the Senate Finance Committee and the Joint Committee on Taxation) has the authority to request the tax returns of any taxpayer, including the president. The law states that, upon receipt of such a request, the Treasury Secretary "shall furnish" the returns to this committee. The committee may in turn submit those returns to the full House for review, effectively making them public.

Whether disclosed through an enacted Title X of H.R. 1, or by way of this committee's current powers, presidential and vice-presidential tax returns would reveal a lot about the status and character of those vying for and holding the highest offices in the land. But because of some extraordinary aspects of President Trump's financial circumstances and history, obtaining his tax returns would also serve valid legislative and civic purposes in the purview of this committee: as a guide to tax reform and to encourage compliance with the tax laws by average citizens.

President Trump is a billionaire, and yet has responded with pride to charges of going years without paying any federal income taxes. Reviewing his tax history could help explain how the very wealthy can go tax free and how to prevent it. Moreover, the principal source of President Trump's wealth—real estate—is infamous for the special treatment it receives under the tax code. Reviewing if and how President Trump has exploited real estate tax loopholes would provide a useful roadmap for reform.

Another tax-reform issue that could profit from access to the president's complete tax returns—including not only his personal 1040, but also returns filed by other entities associated with him—is the use of complex business structures and trusts to obscure sources and types of income and thereby minimize or eliminate tax liabilities. The Trump Organization is not a single company, but a collection of some 500 so-called "pass-through" business entities.[5] How and why wealthy taxpayers work through multiple businesses, and whether they offer opportunities for tax avoidance, could be usefully explored through an examination of Trump Organization returns. Similarly, light could be thrown on any tax-avoidance implications of complex trusts such as GRATs through a review of trust tax returns filed by the president and his family.

[5] Letter to Donald J. Trump from his tax attorneys, March 7, 2016. https://assets.donaldjtrump.com/Tax_Doc.pdf

Because of the importance of receiving a complete picture of this and future presidents' tax-paying status, we urge the committee to consider expanding Title X of H.R. 1 to require disclosure of tax returns of related entities directly or indirectly managed or controlled by the officeholder or candidate, including businesses and trusts. A possible approach might require disclosure by any entity for which the person is a beneficial owner.[6] This would capture entities where the covered candidate, president or vice president exercises control over the entities or has an interest in or receives substantial economic benefit from the assets of the entities.

We also urge the committee to include the returns of such related entities in the request we urge it to make for President Trump's tax returns under 26 U.S. Code § 6103(f).

Another reason to use existing authority to obtain President Trump's returns—besides the assistance they could provide to the formulation of tax-reform policies—is the urgency of answering questions that directly impact his qualification for office and the exercise of his official duties. Those questions include his possible violation of tax law, pursuit of personal financial gain through tax legislation, and gravest of all, sacrifice of the public interest and even of national security to his private business goals and requirements.

As documented in media reports and our report, there are instances of tax avoidance and likely even tax fraud by President Trump and his family that need to be investigated. The public has the right to know the accuracy of these accounts and if there are others yet to come to light; and if so, whether the president has ever been held accountable for them and whether the IRS has the authority and capacity to hold him accountable now.

The president should set a positive example for all taxpayers. President Trump looks like he has a lot to hide from the authorities, not to mention the American people. This may already be undermining the public's compliance with our tax laws. Congress's failure to act to determine if the president is complying with tax laws could make it look complicit, again undermining confidence in the equal application of the law and perhaps undermining voluntary compliance by taxpayers.

Despite his claims to the contrary, President Trump and his family probably benefitted greatly from the tax legislation he promoted and signed into law in 2017. ATF has estimated that the president cut his taxes between $11 to $22 million a year, in addition to reducing future estate taxes.[7] The public has a right to know if his support for the law was influenced by personal financial gain.

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[6] See Public Law No. 115-91, p. 590 for a definition of beneficial owner.
https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf

[7] Americans for Tax Fairness, "How Trump Benefits From The New Trump-GOP Tax Law," July 10, 2018.
https://americansfortaxfairness.org/issue/trump-benefits-new-trump-gop-tax-law/

President Trump has been credibly charged with taking public action to protect and enhance his private wealth, particularly in relation to his luxury hotel a few blocks from the White House. His tax returns are likely to reveal potential conflicts of interest. Worse, the president has shown inexplicable deference to the leaders of foreign powers in conflict with the United States, including Russia and Saudi Arabia, raising the possibility that his business connections in those countries are influencing his conduct of American foreign policy and threatening national security. His tax returns and those of his business entities could provide evidence of foreign business connections that jeopardize his independence.

We thank you for the opportunity to provide this submission.

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