

HEARING BEFORE THE HOUSE COMMITTEE ON WAYS AND MEANS
OVERSIGHT SUBCOMMITTEE

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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.