

**Testimony of Joseph J. Thorndike, Ph.D.
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**Before the Subcommittee on Oversight of the
Committee on Ways and Means
U.S. House of Representatives**

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**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

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 choose 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.

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.

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
<p>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," <i>Roll Call</i>, October 21, 2016, available at https://www.rollcall.com/news/politics/number-tax-returns-each-candidate-released-since-nixon-trump-clinton</p>		

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.

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.

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.