

TESTIMONY OF NORMAN EISEN
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Chairman Pascrell, Ranking Member Kelly, and members of the subcommittee, thank you for inviting me to testify and for this hearing on taxpayer fairness.

Who could read the recent *New York Times* reporting on the president's taxes without noting the unfairness of our tax system, which has come to favor the rich at the expense of hard-working Americans? The articles revealed once again a system that accrues advantage to advantage and compounds disadvantage with disadvantage. It offers tax breaks for income received passively from investments while rigidly taxing income earned through toil. There's no commercial real estate loophole for the mom or dad who makes ends meet by riding the bus to work and scrambling for every opportunity to work overtime.

Not so for the wealthy. The system hedges risk for elites like Donald J. Trump, whose father's money opened the door for his investments.¹ President Trump and other similarly-situated individuals get to carry over depreciation losses to avoid paying taxes for years and years.²

The 2017 tax law has accelerated a trend of making things worse for regular people and even better for the rich. That law, for example, took away the popular mortgage deduction and capped real estate tax deductions for many homeowners. Estimates are that this loss "has inflicted a trillion dollars of damage on homeowners – many of them middle class – throughout the country."³ But affluent investors can still deduct real estate taxes on commercial property.⁴ The new tax law goes further still and lets many commercial real estate investors use a deduction meant for large employers, even if – like the president – they have only a small number of employees.⁵

Incredibly, a person who earns under \$20,000 and, therefore, claims the earned income tax credit is more likely to be audited than someone who earns over \$400,000.⁶ When Congress asked the Internal Revenue Service ("IRS") why that is true, the IRS explained that it lacks the resources it needs to take on wealthy tax filers.⁷ In 2018, the *New York Times* ran a bombshell

¹ David Barstow, Susanne Craig and Russ Buettner, [Trump Engaged in suspect tax schemes as he reaped riches from his father](https://nyti.ms/3luNc2K), *New York Times*, Oct. 2, 2018, <https://nyti.ms/3luNc2K>.

² Paul Sullivan, [How loopholes help trump and other real estate moguls avoid taxes](https://nyti.ms/3jQZhyZ), *New York Times*, May 10, 2019, <https://nyti.ms/3jQZhyZ>.

³ Allan Sloan, [Trump's trillion-dollar hit to homeowners](https://bit.ly/2H16xti), *ProPublica*, Oct. 10, 2019, <https://bit.ly/2H16xti>.

⁴ Sullivan, [How loopholes help trump and other real estate moguls avoid taxes](https://nyti.ms/3jQZhyZ), May 10, 2019.

⁵ *Id.*

⁶ Paul Kiel and Jesse Eisinger, [Who's More Likely to Be Audited: A Person Making \\$20,000 — or \\$400,000?](https://bit.ly/3jR3J0C), *ProPublica*, Dec. 12, 2019, <https://bit.ly/3jR3J0C>.

⁷ Paul Kiel, [IRS: Sorry, but it's just easier and cheaper to audit the poor](https://bit.ly/30VLnEk), *ProPublica*, Oct. 2, 2019, <https://bit.ly/30VLnEk>.

article on the tax practices of the Trump family, going so far as to raise troubling questions about their legality.⁸ The allegations were shocking, and President Trump has never adequately addressed them.

Instead, the President has chosen to conceal his tax returns from the American people. His refusal as a candidate and then as a president is a breach of a longstanding norm. In response to President Nixon's tax controversy, modern presidents have recognized and respected the need to meet a heightened standard of disclosing their tax returns to the American people. In fact, not only have all presidents since Nixon released their tax returns, all major political party nominees since 1976 have done so—with the sole exception of Gerald Ford, who released summary data on his taxes but refused to release his returns before the 1976 election and lost.⁹ Unfortunately, the Senate has refused to take up HR1, the For the People Act, which passed the House and would have turned this norm into a law.¹⁰

If Congress had mandated the release of tax returns before now, we would have not had to wait for the *New York Times* to reveal the details of the president's filings. Despite the wealth reflected in President Trump's executive branch personal financial disclosure reports,¹¹ the *New York Times* reported last month that President Trump paid only \$750 in taxes for 2016 and 2017.¹² That's significantly less than the average American with an adjusted gross income between \$20,000 and \$24,900 paid in taxes for 2016¹³—this from a man who is estimated to have spent over \$140 million of taxpayer money on trips to his own golf courses.¹⁴ That's not tax fairness.

The *New York Times* article also included details that raise questions about the legality of President Trump's tax avoidance.¹⁵ The article indicated that the IRS has been questioning the legitimacy of his receipt of a \$72.9 million refund based on a deduction President Trump may not have been entitled to claim. The dispute appears to stem from his reported abandonment of any interest in his Atlantic City casinos. Rather than abandoning it outright, he appears to have received a 5 percent interest in its new owner—which could invalidate his claimed deduction and force him to repay as much as \$100 million to the IRS. Furthermore, the *New York Times* indicates that, over a fifteen-year period ending before 2017, President Trump did not pay any taxes at all for ten of the years, due largely to a massive carryover deduction for business losses

⁸ Barstow, *et al.*, [Trump Engaged in Suspect Tax Schemes as He Reaped Riches From His Father](#), Oct. 2, 2018.

⁹ Tom Kertscher, [Is Donald Trump the only major-party nominee in 40 years not to release his tax returns?](#), *Politifact*, Sep. 28, 2016, <https://bit.ly/2GQFbj>.

¹⁰ Ashley Killough, and Lauren Fox, [House Democrats pass plan to overhaul ethics rules, expand voting rights and target Trump tax returns](#), Clare Foran, *CNN*, March 8, 2019, <https://cnn.it/30W88bk>.

¹¹ U.S. Office Gov't Ethics, [Financial Disclosure Report of Donald J. Trump \(OGE Form 278e\)](#), June 14, 2017, <https://bit.ly/33LGake>.

¹² Russ Buettner, Susanne Craig, and Mike McIntire, [Long-Concealed Records Show Trump's Chronic Losses and Years of Tax Avoidance](#), *New York Times*, Sep. 27, 2020, <https://nyti.ms/34K9t65>.

¹³ Alicia Adamczyk, [Trump reportedly paid \\$750 in taxes in 2016 and 2017. Here's how much the average American pays](#), *CNBC*, Sep. 28, 2020, <https://cnb.cx/2SNu6c2>.

¹⁴ Sophie Germain, [Trump Golf Count](#), Sep. 27, 2020, <https://trumpgolfcount.com/>.

¹⁵ Buettner, *et al.*, [Long-Concealed Records Show Trump's Chronic Losses and Years of Tax Avoidance](#), Sep. 27, 2020.

one year. The paper also revealed that he deducted \$70,000 for haircare—an amount that exceeded the median household income in the United States in 2018.¹⁶

For his part, President Trump declared the article “fake news.”¹⁷ But he offered no evidence to contradict it.¹⁸ All we have to evaluate his denial is his track record for candor or its lack thereof.¹⁹

President Trump’s taxes may reveal a national security threat to the United States. According to the *New York Times* article and Trump’s own public financial disclosure report, he has massive debts – and many of them are about to come due. The article emphasizes that he must repay or refinance over \$300 million worth of debt in the next four years. Moreover, these are only the debts we know about. The operations of the Trump Organization, an opaque network of shell companies, are mysterious. Its revenue, losses, and debts are hidden from Americans.

It is not at all clear how, or even *if*, President Trump will be able to repay his debts, nor is it clear that his businesses can remain solvent. Trump has refused to provide the American people the information necessary to reassure them that he is not financially vulnerable. It is safe to say that, if President Trump were a regular executive branch employee, he probably could not obtain a security clearance at any level. One critical factor in the National Security Adjudicative Guidelines, which control the issuance of security clearances, focuses on financial considerations, and President Trump’s financial situation, business dealings, and tax issues would almost certainly raise a disqualifying security concern.²⁰ Americans have to worry about what President Trump could do to curry favor with those who might help him repay the more than \$300 million worth of loans that will come due in the next four years.²¹

This is not idle speculation.²² It stems from the original sin of this administration: President Trump’s refusal to divest his conflicting financial interests.²³ All presidents elected since enactment of the Ethics in Government Act in the post-Watergate era either divested their interests, placed them in blind trusts, or limited themselves to the types of nonconflicting assets that cabinet officials are permitted to hold.²⁴ All, that is, except for President Trump.

¹⁶ U.S. Census Bureau, Household Income: 2018 (Gloria G. Guzman), Sep. 2019, <https://bit.ly/3iRLHd8>.

¹⁷ White House, Remarks by President Trump in Press Briefing, Sep. 27, 2020, <https://bit.ly/33Pn90f>.

¹⁸ Tucker Higgins, Trump paid little to no federal income taxes over several years as he piled up losses and debt, *NYT reports*, *CNBC*, Sep. 27, 2020, <https://cnb.cx/3dkL1fp>.

¹⁹ Glenn Kessler, Salvador Rizzo and Meg Kelly, President Trump has made more than 20,000 false or misleading claims, *Washington Post*, July 13, 2020, <https://wapo.st/36WxoSq>.

²⁰ Joe Davidson, Like President Trump, they owed money. But they lost their security clearance, *Washington Post*, Oct. 6, 2020, <https://wapo.st/3lxXmQj>; see also, Office of the Director of National Intelligence, National Security Adjudicative Guidelines, June 8, 2017, <https://bit.ly/3jQjchf>.

²¹ Russ Buettner, Susanne Craig, and Mike McIntire, Long-Concealed Records Show Trump’s Chronic Losses and Years of Tax Avoidance, *New York Times*, Sep. 27, 2020, <https://nyti.ms/34KXwNj>.

²² Walter M. Shaub, Ransacking the Republic, *New York Review of Books*, July 2, 2020, <https://bit.ly/2GLYRLO>.

²³ Andy Sullivan, Emily Stephenson and Steve Holland, Trump says won’t divest from his business while president, *Reuters*, Jan. 11, 2017, <https://reut.rs/2FibWLz>.

²⁴ Matt O’Brien, Donald Trump won’t do what Ronald Reagan, George H.W. Bush, Bill Clinton and George W. Bush did, *Washington Post*, Nov. 15, 2016, <https://wapo.st/3jSLkjX>.

He kept his conflicting financial interests and set about monetizing the presidency. He has garnered publicity for his properties by visiting them frequently – 503 times and counting in under four years.²⁵ He has used many of these trips as taxpayer-funded publicity for his business, talking about them on camera and bringing foreign leaders to them.²⁶ President Trump has charged the Secret Service for visiting his properties while protecting him.²⁷ He and members of his administration, including Vice President Mike Pence and U.S. Ambassador to the United Kingdom Woody Johnson, have gone out of their way to stay at his overseas properties.²⁸ He doubled the initiation fee at his Mar-a-Lago resort after he was elected, and he has appointed paying members of his properties to senior government posts.²⁹

This weekend, the *New York Times* published further details of its investigation into President Trump's taxes. The paper "found over 200 companies, special-interest groups and foreign governments that patronized Trump's properties while reaping benefits from him and his administration" during his time in office.³⁰ The article recounted how President Trump leveraged the presidency to advance his political ambitions, blurring lines between his official responsibilities and his personal interests: he was in attendance at 34 fund-raisers that took place at his properties, bringing them \$3 million in revenue. "Sometimes, he lined up his donors to ask what they needed from the government." The *New York Times* offered specific examples in the article of instances when individuals and businesses or other entities sought to curry favor with President Trump by patronizing his businesses, including instances when favorable governmental action followed either payments to the Trump Organization or contributions in support of his candidacy.

President Trump's business activities have also violated the Emoluments Clauses of the U.S. Constitution.³¹ These clauses of the nation's governing document were the very first government ethics restrictions for a reason. As I have written before, "[f]oreign interference in the American political system was among the gravest dangers feared by the Founders of our

²⁵ Citizens for Responsibility and Ethics in Washington, President Trump's 3,400 conflicts of interest, Sep. 24, 2020, <https://bit.ly/3iPv6XD>.

²⁶ Anita Kumar, Trump can't stop bragging to foreign leaders about his resorts, *Politico*, Oct. 20, 2019, <https://politi.co/3jR4syU>.

²⁷ David A. Fahrenthold, Josh Dawsey and Joshua Partlow, Room rentals, resort fees and furniture removal: How Trump's company charged the U.S. government more than \$900,000, *Washington Post*, Aug. 27, 2020, <https://wapo.st/3nHsTRK>.

²⁸ Allan Smith, Pence's Doonbeg detour cost nearly \$600K in ground transportation fees, *NBC News*, Sep. 12, 2019, <https://nbcnews.to/2HsSsYn>; see also, Kelly McLaughlin, One of Trump's visits to his Scotland resort cost taxpayers more than \$950,000 in Secret Service fees, *Business Insider*, March 25, 2020, <https://bit.ly/3dj331p>; Martyn McLaughlin, Exclusive: Taxpayers pick up tab for billionaire US ambassador's stay at Donald Trump's Scottish resort, *The New Scotsman*, Oct. 7, 2020, <https://bit.ly/3nNPRXx>.

²⁹ Brad Heath, Trump picks golf club, Mar-a-Lago members as ambassadors, *USA Today*, Feb. 10, 2019, <https://bit.ly/3dkO4En>; see also, Robert Frank, Mar-a-Lago membership fee doubles to \$200,000, *CNBC*, Jan. 25, 2017, <https://cnb.cx/2H01QAK>.

³⁰ Nicholas Confessore, Karen Yourish, Steve Eder, Ben Protess, Maggie Haberman, Grace Ashford, Michael LaForgia, Kenneth P. Vogel, Michael Rothfeld and Larry Buchanan, The Swamp That Trump Built, *New York Times*, Oct. 10, 2020, <https://nyti.ms/36WlbNu>.

³¹ Gabe Lezra, Profiting off the Presidency: Trump's Violations of the Emoluments Clauses, *American Constitution Society*, Oct. 1, 2019, <https://bit.ly/2H0NgZ1>.

nation and the framers of our Constitution.”³² It renders government officials vulnerable to the influence of foreign powers intent on harming the United States.

To quote the *New York Times* article from last month, “When he took office, Mr. Trump said he would pursue no new foreign deals as president. Even so, in his first two years in the White House, his revenue from abroad totaled \$73 million. And while much of that money was from his golf properties in Scotland and Ireland, some came from licensing deals in countries with authoritarian-leaning leaders or thorny geopolitics — for example, \$3 million from the Philippines, \$2.3 million from India and \$1 million from Turkey.”³³

These revelations resonate because they arise in the context of many more unanswered questions about foreign financial ties. Take President Trump’s abrupt reversal on ZTE, a telecommunications company linked to the Chinese government.³⁴ The U.S. government had imposed sanctions on ZTE for violating U.S. law by selling equipment to North Korea and Iran, then trying to cover up the violations.³⁵ But on May 11, 2018, a Chinese government-controlled company announced that it would lend \$500 million to a project in which the Trump Organization was involved.³⁶ On May 13, President Trump tweeted: “President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!”³⁷ What motivated this abrupt reversal is an unanswered question.³⁸

Indeed, Citizens for Responsibility and Ethics in Washington (“CREW”), an organization I co-founded and formerly chaired, has documented over 3,400 conflicts of interest afflicting the President—foreign and domestic. The *New York Times* reporting sheds important new light on this profoundly troubling pattern.

In sum, our tax code allows excessive tax avoidance and tax evasion, and that needs to change. The tax loopholes and tax breaks that wealthy individuals like President Trump exploit should be closed. The IRS deserves adequate funding to make tax audits a credible deterrent against exploitation, and it should stop its practice of auditing poor and middle-class Americans more frequently than it audits the wealthy. Our tax system should reward work, not wealth.

This is a matter of equity. America is long overdue for a fairer tax system. There is an overlap with governmental conflicts of interest, as well. As Richard Nixon ironically declared, “people have got to know whether or not their President is a crook.”³⁹ Requiring presidents to

³² Norman Eisen, Richard Painter and Laurence H. Tribe, The Emoluments Clause: Its text, meaning, and application to Donald J. Trump, *The Brookings Institution*, Dec. 16, 2016, <https://brook.gs/2GNcZ7H>.

³³ Russ Buettner, Susanne Craig and Mike McIntire, Long-Concealed Records Show Trump’s Chronic Losses and Years of Tax Avoidance, *New York Times*, Sep. 27, 2020, <https://nyti.ms/34K9t65>.

³⁴ Matthew Yglesias, Trump helps sanctioned Chinese phone maker after China delivers a big loan to a Trump project, *Vox*, May 15, 2018, <https://bit.ly/34L06Tv>.

³⁵ Ana Swanson, Trump Administration Plans to Revive ZTE, Prompting Backlash, *New York Times*, May 25, 2018, <https://nyti.ms/2SS4wIT>.

³⁶ Allan Smith, Trump’s controversial ZTE order came days after the Chinese government provided millions to a Trump Organization-tied project, *Business Insider*, May 15, 2018, <https://bit.ly/30ZkRKi>.

³⁷ Twitter, @realDonaldTrump, May 13, 2018, <https://bit.ly/3iQvFAQ>.

³⁸ Bess Levin, Is China Straight-Up Bribing Donald Trump?, *Vanity Fair*, May 15, 2018, <https://bit.ly/33Pw9mb>.

³⁹ YouTube, Richard Nixon – I’m Not a Crook, (video recorded Nov. 17, 1973), <https://bit.ly/3lAdDnD>.

disclose their tax returns to the public, investigating any suspicion of tax evasion, and holding them accountable for any proven wrongdoing would be a down payment on making the system fairer. Faith in the tax system also requires the president to model exemplary behavior in paying taxes. Instead, Donald Trump is the face of this broken system. It is one that is overdue for repair—in the name of fairness.