

## APPENDIX A

### Chronology

*Updated May 6, 2019*

#### The 2016 Election

The effort to expose President Trump’s tax returns began during the 2016 election. The Democratic candidate for President urged then-candidate Trump to release his returns. When he declined to do so, the Democratic candidate sought to generate political pressure to force their release, repeatedly criticizing his decision and expressing her belief that public exposure of the returns would be politically damaging to her opponent.<sup>1</sup>

#### Representative Neal’s Advocacy for Exposure

When President Trump took office after the election, the House Minority Leader and senior Democratic members of the Committee on Ways and Means (including Ranking Member Neal) took up their party’s election season demands in Congress. Their chosen tool was section 6103(f). The stated rationales have shifted over time, but the objective remained constant: Use section 6103(f) to obtain the tax returns and make them public.

As Ranking Member of the Committee, Representative Neal immediately began urging the Committee to obtain President Trump’s tax returns for the purpose of releasing them. In February 2017, he explained his desire for a public opportunity to “see the tax forms” and for “the media to sift and sort” them.<sup>2</sup> In March 2017, Ranking Member Neal and other Members urged Chairman Kevin Brady to submit a section 6103(f) request “for copies of the President’s

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<sup>1</sup> See, e.g., *The Lead with Jake Tapper* (transcript of CNN television broadcast May 11, 2016) (“[W]hy doesn’t he want to release them? Yes, well, we’re going to find out.”), <http://www.cnn.com/TRANSCRIPTS/1605/11/cg.01.html>; *New Day* (transcript of CNN television broadcast Aug. 2, 2016) (“We would like to see those tax returns, wouldn’t we?”), <http://www.cnn.com/TRANSCRIPTS/1608/02/nday.03.html>; *The Situation Room* (transcript of CNN television broadcast Aug. 12, 2016) (“He refuses to do what every other presidential candidate in decades has done and release his tax returns.”), <http://www.cnn.com/TRANSCRIPTS/1608/12/sitroom.01.html>; *Erin Burnett OutFront* (transcript of CNN television broadcast Sept. 6, 2016) (“He said that the American people don’t care about his tax returns, and in fact, he’s also said that it’s none of our business. I just think he’s dead wrong.”), <http://www.cnn.com/TRANSCRIPTS/1609/06/ebo.01.html>; *The Situation Room* (transcript of CNN television broadcast Sept. 7, 2016) (“He clearly has something to hide.”), <http://www.cnn.com/TRANSCRIPTS/1609/07/sitroom.02.html>; *CNN Newsroom* (transcript of CNN television broadcast Sept. 27, 2016) (“[M]aybe he doesn’t want the American people, all of you watching tonight, to know that he’s paid nothing in Federal taxes. . . .”), <http://www.cnn.com/TRANSCRIPTS/1609/27/cnr.03.html>.

<sup>2</sup> Press Conference, Statement by Rep. Richard Neal, C-SPAN Video, at 19:10–20:19 (Feb. 14, 2017), <https://www.c-span.org/video/?424013-1/house-democrats-call-investigation-wake-michael-flynn-resignation>.

federal tax returns for the last ten years.”<sup>3</sup> They explained that the Committee should “then vote . . . to submit the President’s federal tax returns to the House of Representatives and Senate—thereby, if successful, making them available to the public.”<sup>4</sup> In April 2017, Ranking Member Neal recalled the 2016 election and asserted that President Trump was “supposed to” have made these returns available to the public as a candidate.<sup>5</sup>

Ranking Member Neal also served as an original cosponsor of a resolution of inquiry, H. Res. 186, providing that “the Secretary of the Treasury is directed to furnish to the House of Representatives, not later than 10 days after the adoption of this resolution, the full tax returns of Donald J. Trump for tax years 2006 through 2015.”<sup>6</sup> Ranking Member Neal explained that the resolution was designed to force the immediate public exposure of those returns.<sup>7</sup>

On March 30, 2017, the Committee voted down H. Res. 186 and issued a report condemning the resolution as an “abuse of authority.”<sup>8</sup> In dissenting views included in the committee report, Ranking Member Neal reiterated his “steadfast” objective of exposing the President’s tax returns to the public:

Committee Republicans continue to block our requests for this Committee to exercise its authority under Section 6103 of the Internal Revenue Code to obtain, examine, *and make available to the public* President Trump’s federal tax returns. . . . *Committee Democrats remain steadfast in our pursuit to have [President Trump’s] individual tax returns disclosed to the public.*<sup>9</sup>

Ranking Member Neal’s dissenting views made no mention of any interest in understanding how the IRS audits and enforces the Federal tax laws against a President, as the Committee’s April 3 letter now asserts.

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<sup>3</sup> Letter from Hon. Bill Pascrell, Jr., et al., to Hon. Orrin Hatch, Chairman, S. Comm. on Finance, & Hon. Kevin Brady, Chairman, H. Comm. on Ways & Means (Mar. 2, 2017), <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=1898>.

<sup>4</sup> *Id.*

<sup>5</sup> “This is not about the law, this is about custom and practice. It’s a settled tradition . . . candidates reach the level of expectation that they’re supposed to release their tax forms.” Press Conference, Statement by Ranking Member Richard Neal (Apr. 5, 2017), <https://www.speaker.gov/newsroom/4517/>.

<sup>6</sup> H.R. Res. 186, 115th Cong. (Mar. 9, 2017).

<sup>7</sup> *See id.*; H.R. Rep. No. 115-73, Dissenting Views, at 8 (Mar. 30, 2017), <https://www.congress.gov/115/crpt/hrpt73/CRPT-115hrpt73.pdf> (hereinafter Ways & Means Report).

<sup>8</sup> Ways & Means Report, *supra* note 7, at 3.

<sup>9</sup> *Id.*, Dissenting Views, at 7–8 (emphasis added).

## Other Senior House Democrats' Advocacy for Exposure

Leader Pelosi and other senior Ways and Means Committee members also repeatedly stated that the purpose of requesting President Trump's tax returns was to "make those tax returns public."<sup>10</sup> Leader Pelosi explained that requesting the returns would satisfy the public's "right to know"<sup>11</sup> and complained that Republicans "won't join us in the release of the President's tax returns."<sup>12</sup>

Exposure for the sake of exposure was the one constant purpose that drove the requests that Ranking Member Neal and other senior Committee members advocated throughout the previous Congress. In addition, Congressional leaders offered a wide variety of evolving rationales and speculation about what, if anything, might be found in the tax returns upon their exposure. Before the conclusion of the Special Counsel's investigation, a common theory was that the President's tax returns would show "the President's relationship with Russia,"<sup>13</sup> "disruption of our [2016] election,"<sup>14</sup> and "any personal embarrassment to the President."<sup>15</sup> Leader Pelosi speculated: "We think [the returns] will show us some connection that will be useful in the investigation of what do the Russians have on Donald Trump . . . ."<sup>16</sup>

Another theory offered by the lead sponsor of H. Res. 186, Representative Pascrell, was that exposure of the President's tax returns would help "make sure the President and his family are not hiding financial ties that could cause conflicts in the decision making."<sup>17</sup> Representative Pascrell also thought it was "imperative for the public to know" the President's "self-reported net worth,"<sup>18</sup> and Ranking Member Neal thought they should know "just how extensive [his] overseas investments have been," based on the tax returns.<sup>19</sup>

In yet another theory, Ranking Member Neal's dissent in support of H. Res. 186 explained that the President's tax returns would give the "clearest picture" of the President's "financial health" and inform the consideration of tax reform legislation (which was enacted in December 2017).<sup>20</sup>

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<sup>10</sup> Press Conference, Minority Leader Nancy Pelosi, House Democratic Leadership Press Conference at 2017 Issues Conference (Feb. 8, 2017), <https://www.speaker.gov/newsroom/282017/> (hereinafter 2017 Issues Conference).

<sup>11</sup> 163 Cong. Rec. H2498 (daily ed. Mar. 28, 2017) (statement of Rep. Pelosi), <https://www.congress.gov/congressional-record/2017/03/28/house-section/article/H2489-1>.

<sup>12</sup> Press Conference, Minority Leader Nancy Pelosi (July 13, 2017), <https://www.speaker.gov/newsroom/71317-8/>.

<sup>13</sup> 2017 Issues Conference, *supra* note 10.

<sup>14</sup> Press Conference, Minority Leader Nancy Pelosi (Mar. 8, 2017), <https://www.speaker.gov/newsroom/382017-2/>.

<sup>15</sup> *Id.*

<sup>16</sup> Press Conference, Minority Leader Nancy Pelosi (Apr. 6, 2017), <https://www.speaker.gov/newsroom/4617-4/>.

<sup>17</sup> Press Conference, Statement by Rep. Bill Pascrell (July 14, 2017), <http://www.cq.com/doc/newsmakertranscripts-5142259>; *see also* House Democrats on Russian Interference in 2016 Election, C-SPAN Video (July 14, 2017), <https://www.c-span.org/video/?431350-1/democrats-step-pressure-gop-amid-widening-russia-probe>.

<sup>18</sup> Letter from Hon. Bill Pascrell, Jr., to Hon. Kevin Brady, Chairman, H. Comm. on Ways & Means (Feb. 1, 2017), <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=2195>.

<sup>19</sup> Press Conference, Rep. Richard Neal, C-SPAN Video, at 19:46 (Feb. 14, 2017), <https://www.c-span.org/video/?424013-1/house-democrats-call-investigation-wake-michael-flynn-resignation>.

<sup>20</sup> Ways & Means Report, *supra* note 7, Dissenting Views, at 7.

Other theories included speculation that the tax returns would expose the President's "emoluments;"<sup>21</sup> would show his "charitable donations" or "tax loopholes;"<sup>22</sup> would reveal whether he had a "Chinese connection;"<sup>23</sup> or would "maybe . . . be a path to some other questions."<sup>24</sup> At other times, Leader Pelosi simply explained that exposure of the President's tax returns would "fulfill" a campaign "promise," or would "honor tradition."<sup>25</sup>

Although the efforts to force the public release of President Trump's tax returns in the previous Congress failed (despite numerous letters, committee amendments, resolutions, and other attempts),<sup>26</sup> Leader Pelosi made clear that the effort would continue if Democrats took the House in 2018. The *San Francisco Chronicle* reported in October 2018 that Leader Pelosi "told the [paper's] editorial board" that "[d]emanding the president's tax returns 'is one of the first things we'd do—that's the easiest thing in the world.'"<sup>27</sup>

### The Committee's Construction of a Pretextual Purpose

With a new Democratic majority in the House, the Committee pressed ahead in the effort to obtain and release the President's tax returns. Chairman Neal had recognized the unprecedented nature of the Committee's planned request: "This has never happened before, so you want to be very meticulous."<sup>28</sup>

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<sup>21</sup> Letter from Hon. Richard E. Neal, Ranking Member, H. Comm. on Ways & Means, et al., to Hon. Paul Ryan, Speaker, U.S. House of Reps., at 2, 6 (Jan. 12, 2017), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-01-12.Ranking%20Members%20to%20Speaker%20Ryan%20Re.Trump\\_.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-01-12.Ranking%20Members%20to%20Speaker%20Ryan%20Re.Trump_.pdf); see also Amendment offered by Rep. Doggett to the Authorization and Oversight Plan of the H. Comm. on Ways & Means, 115th Cong. (Feb. 14, 2017), <https://gop-waysandmeans.house.gov/wp-content/uploads/2017/02/20170214-Doggett-Amendment.pdf>.

<sup>22</sup> See, e.g., 163 Cong. Rec. H4212-13 (daily ed. May 16, 2017) (statement of Rep. Pascrell), <https://www.congress.gov/congressional-record/2017/05/16/house-section/article/H4212-1>.

<sup>23</sup> Press Conference, Minority Leader Nancy Pelosi, Demanding a Vote Requiring President Trump to Release Tax Returns (Apr. 5, 2017), <https://www.speaker.gov/newsroom/4517/> (hereinafter Pelosi Press Conference Apr. 5, 2017).

<sup>24</sup> Press Conference, Minority Leader Nancy Pelosi (June 2, 2017), <https://www.speaker.gov/newsroom/6217-4/>.

<sup>25</sup> Blog Post, Minority Leader Nancy Pelosi, Where are President Trump's Tax Returns? (June 20, 2017), <https://www.speaker.gov/newsroom/where-are-president-trumps-tax-returns/>.

<sup>26</sup> See Rep. Bill Pascrell, *President Trump's Tax Returns*, <https://pascrell.house.gov/issues/president-trumps-tax-returns/> (last visited May 6, 2019).

<sup>27</sup> John Wildermuth, *Pelosi: Trump's tax returns are fair game if Democrats win House*, S.F. Chron., Oct. 11, 2018 (quoting Minority Leader Pelosi), <https://www.sfchronicle.com/politics/article/Pelosi-Trump-s-tax-returns-are-fair-game-if-13297954.php>.

<sup>28</sup> Richard Rubin, *Trump's Tax Returns in the Spotlight if Democrats Capture the House*, Wall St. J., Oct. 3, 2018, <https://www.wsj.com/articles/trumps-tax-returns-in-the-spotlight-if-democrats-capture-the-house-1538575880>.

In January 2019, the Committee spokesperson explained the plan to “force” the disclosure of the President’s returns: “[Chairman Neal] wants to lay out a case about why presidents should be disclosing their tax returns before he formally forces [the President] to do it.”<sup>29</sup>

Because Congress may only conduct investigations to further a legitimate legislative purpose, Congressional investigations ordinarily begin with a legislative purpose, and that purpose defines the scope of the documents that are pertinent to the Committee’s investigation.<sup>30</sup> But here, by the Committee’s own admission, the Committee’s investigation began in the opposite direction. The Committee started with the documents it planned to obtain and release (the President’s tax returns), and then it sought—in Chairman Neal’s words—to “construct[]” a “case” for seeking the documents that would appear to be in furtherance of a legitimate legislative purpose.<sup>31</sup>

The Committee knew that exposure for the sake of exposure would not be a legitimate purpose, and so the Committee could no longer rely upon prior statements to that effect. At the same time, the Committee lacked jurisdiction to rely upon other frequently cited public justifications for the request—such as interest in “the Russia connection”<sup>32</sup> and the President’s alleged financial conflicts of interest. Other House committees might have tried to make 6103(f) requests based upon such justifications, but no other House committee would have the authority to publicly release the tax returns after obtaining them. As the Committee was advised by the former Chief of Staff of the Joint Committee on Taxation, there is “one key for purposes of disclosing the information to the public” and the statute “gave that key to the tax committees.”<sup>33</sup> To use this key, the Committee on Ways and Means had to make the request, and the other justifications that might have been offered by other committees had to be discarded.

Thus, the Committee with the key to publicly disclose the tax returns, in Chairman Neal’s words, “constructed” a “case” to justify its request.<sup>34</sup> The result was the Committee’s letter of April 3, asserting a single legislative interest in “the extent to which the IRS audits and enforces the

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<sup>29</sup> Brian Faler, *Incoming Democratic tax chairman won't make quick grab for Trump's returns*, Politico (Jan. 2, 2019) (quoting Committee Spokesperson), <https://www.politico.com/story/2019/01/02/congress-trump-tax-returns-richard-neal-1056839>.

<sup>30</sup> See 165 Cong. Rec. S2260 (daily ed. Apr. 4, 2019) (statement of Sen. Grassley), <https://www.congress.gov/116/crec/2019/04/04/CREC-2019-04-04-senate.pdf>.

<sup>31</sup> Sunlen Serfaty et al., *Republicans warn Trump tax request 'sets a dangerous standard' and accuse Dems of weaponizing IRS*, CNN, Apr. 5, 2019, <https://www.cnn.com/2019/04/04/politics/trump-tax-returns-request-republicans-congress/index.html> (“[W]e wanted to make sure that the case that we constructed was in fact one that would stand up under the critical scrutiny of the federal courts.”).

<sup>32</sup> Pelosi Press Conference Apr. 5, 2017, *supra* note 23.

<sup>33</sup> Transcript, *Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns: Hearing before Subcomm. on Oversight, H. Comm. on Ways & Means*, 116th Cong. (Feb. 7, 2019) (statement of George K. Yin), <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Transcript%20-%20Final.pdf>.

<sup>34</sup> Serfaty, *supra* note 31 (quoting Chairman Neal).

Federal tax laws against a President,” and requesting the tax returns and related documents of just one of them—President Trump.<sup>35</sup>

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<sup>35</sup> Letter from Hon. Richard E. Neal, Chairman, H. Comm. on Ways & Means, to Hon. Charles P. Rettig, Comm’r, IRS (Apr. 3, 2019), <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Neal%20Letter%20to%20Rettig%20%28signed%29%20-%202019.04.03.pdf>.