

Union Calendar No. 20

110TH CONGRESS
1ST SESSION

H. R. 1255

[Report No. 110-44]

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2007

Mr. WAXMAN (for himself, Mr. PLATTS, Mr. CLAY, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MARCH 9, 2007

Additional sponsors: Mr. YARMUTH, Mr. TOWNS, Mr. VAN HOLLEN, Mrs. MALONEY of New York, Mr. PAUL, Ms. WATSON, Mr. UDALL of Colorado, Mr. CUMMINGS, Mr. ACKERMAN, Mr. FILNER, and Mr. GRIJALVA

MARCH 9, 2007

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitu-

tionally based privilege against disclosure of Presidential records.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Presidential Records
5 Act Amendments of 2007”.

6 **SEC. 2. PROCEDURES FOR CONSIDERATION OF CLAIMS OF**
7 **CONSTITUTIONALLY BASED PRIVILEGE**
8 **AGAINST DISCLOSURE.**

9 (a) IN GENERAL.—Chapter 22 of title 44, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 2208. Claims of constitutionally based privilege**
13 **against disclosure**

14 “(a)(1) When the Archivist determines under this
15 chapter to make available to the public any Presidential
16 record that has not previously been made available to the
17 public, the Archivist shall—

18 “(A) promptly provide notice of such deter-
19 mination to—

20 “(i) the former President during whose
21 term of office the record was created; and

22 “(ii) the incumbent President; and

23 “(B) make the notice available to the public.

24 “(2) The notice under paragraph (1)—

1 “(A) shall be in writing; and

2 “(B) shall include such information as may be
3 prescribed in regulations issued by the Archivist.

4 “(3)(A) Upon the expiration of the 20-day period (ex-
5 cepting Saturdays, Sundays, and legal public holidays) be-
6 ginning on the date the Archivist provides notice under
7 paragraph (1)(A), the Archivist shall make available to the
8 public the record covered by the notice, except any record
9 (or reasonably segregable part of a record) with respect
10 to which the Archivist receives from a former President
11 or the incumbent President notification of a claim of con-
12 stitutionally based privilege against disclosure under sub-
13 section (b).

14 “(B) A former President or the incumbent President
15 may extend the period under subparagraph (A) once for
16 not more than 20 additional days (excepting Saturdays,
17 Sundays, and legal public holidays) by filing with the Ar-
18 chivist a statement that such an extension is necessary
19 to allow an adequate review of the record.

20 “(C) Notwithstanding subparagraphs (A) and (B), if
21 the period under subparagraph (A), or any extension of
22 that period under subparagraph (B), would otherwise ex-
23 pire after January 19 and before July 20 of the year in
24 which the incumbent President first takes office, then such

1 period or extension, respectively, shall expire on July 20
2 of that year.

3 “(b)(1) For purposes of this section, any claim of
4 constitutionally based privilege against disclosure must be
5 asserted personally by a former President or the incum-
6 bent President, as applicable.

7 “(2) A former President or the incumbent President
8 shall notify the Archivist, the Committee on Oversight and
9 Government Reform of the House of Representatives, and
10 the Committee on Homeland Security and Governmental
11 Affairs of the Senate of a privilege claim under paragraph
12 (1) on the same day that the claim is asserted under para-
13 graph (1).

14 “(c)(1) The Archivist shall not make publicly avail-
15 able a Presidential record that is subject to a privilege
16 claim asserted by a former President until the expiration
17 of the 20-day period (excluding Saturdays, Sundays, and
18 legal public holidays) beginning on the date the Archivist
19 is notified of the claim.

20 “(2) Upon the expiration of such period the Archivist
21 shall make the record publicly available unless otherwise
22 directed by a court order in an action initiated by the
23 former President under section 2204(e).

1 “(d)(1) The Archivist shall not make publicly avail-
2 able a Presidential record that is subject to a privilege
3 claim asserted by the incumbent President unless—

4 “(A) the incumbent President withdraws the
5 privilege claim; or

6 “(B) the Archivist is otherwise directed by a
7 final court order that is not subject to appeal.

8 “(2) This subsection shall not apply with respect to
9 any Presidential record required to be made available
10 under section 2205(2)(A) or (C).

11 “(e) The Archivist shall adjust any otherwise applica-
12 ble time period under this section as necessary to comply
13 with the return date of any congressional subpoena, judi-
14 cial subpoena, or judicial process.”.

15 *(b) RESTRICTIONS.—Section 2204 of title 44, United*
16 *States Code (relating to restrictions on access to presi-*
17 *dential records) is amended by adding at the end the fol-*
18 *lowing new subsection:*

19 *“(f) The Archivist shall not make available any origi-*
20 *nal presidential records to any individual claiming access*
21 *to any presidential record as a designated representative*
22 *under section 2205(3) if that individual has been convicted*
23 *of a crime relating to the review, retention, removal, or de-*
24 *struction of records of the Archives.”.*

1 ~~(b)~~ (c) CONFORMING AMENDMENTS.—(1) Section
2 2204(d) of title 44, United States Code, is amended by
3 inserting “, except section 2208,” after “chapter”.

4 (2) Section 2207 of title 44, United States Code, is
5 amended in the second sentence by inserting “, except sec-
6 tion 2208,” after “chapter”.

7 ~~(e)~~ (d) CLERICAL AMENDMENT.—The table of sec-
8 tions at the beginning of chapter 22 of title 44, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

“2208. Claims of constitutionally based privilege against disclosure.”.

11 **SEC. 3. EXECUTIVE ORDER OF NOVEMBER 1, 2001.**

12 Executive Order number 13233, dated November 1,
13 2001 (66 Fed. Reg. 56025), shall have no force or effect.

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