

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 35

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## AN ACT

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Presidential Records  
3 Act Amendments of 2009”.

4 **SEC. 2. PROCEDURES FOR CONSIDERATION OF CLAIMS OF**  
5 **CONSTITUTIONALLY BASED PRIVILEGE**  
6 **AGAINST DISCLOSURE.**

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

10 **“§ 2208. Claims of constitutionally based privilege**  
11 **against disclosure**

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

16 “(A) promptly provide notice of such deter-  
17 mination to—

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

20 “(ii) the incumbent President; and

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

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

23 “(A) shall be in writing; and

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

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

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

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

24       “(b)(1) For purposes of this section, any claim of  
25 constitutionally based privilege against disclosure must be

1 asserted personally by a former President or the incum-  
2 bent President, as applicable.

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

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

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

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

23 “(A) the incumbent President withdraws the  
24 privilege claim; or

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

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

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

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

14          “(f) The Archivist shall not make available any origi-  
15 nal presidential records to any individual claiming access  
16 to any presidential record as a designated representative  
17 under section 2205(3) if that individual has been convicted  
18 of a crime relating to the review, retention, removal, or  
19 destruction of records of the Archives.”.

20          (c) CONFORMING AMENDMENTS.—(1) Section  
21 2204(d) of title 44, United States Code, is amended by  
22 inserting “, except section 2208,” after “chapter”.

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

1 (d) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 22 of title 44, United States  
3 Code, is amended by adding at the end the following:

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

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

5 Executive Order No. 13233, dated November 1, 2001  
6 (66 Fed. Reg. 56025), shall have no force or effect.

Passed the House of Representatives January 7,  
2009.

Attest:

*Clerk.*



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