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110TH CONGRESS *1st Session*	SENATE	REPORT 110–202

PRESIDENTIAL LIBRARY DONATION REFORM ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 1254

TO AMEND TITLE 44, UNITED STATES CODE, TO REQUIRE INFORMATION ON CONTRIBUTORS TO PRESIDENTIAL LIBRARY FUND-RAISING ORGANIZATIONS

OCTOBER 22, 2007.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 1254]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 1254) to amend title 44, United States Code, to require information on contributors to Presidential library fundraising organizations, reports favorably thereon with amendments and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

H.R. 1254 is a bill to amend title 44, United States Code, to require any organization that is established for the purpose of raising funds for creating, maintaining, expanding, or conducting activities at a Presidential archival depository or any facilities relating to a Presidential archival depository to disclose the sources and amounts of any funds raised, and for other purposes. Under existing law, current and former Presidents, through privately established foundations, are free to raise unlimited amounts of money from undisclosed sources to fund the construction and maintenance of their Presidential libraries and related facilities. H.R. 1254 would amend the Presidential Libraries Act (44 U.S.C. 2112) to make the fundraising process for Presidential libraries open to public scrutiny by requiring the disclosure of the sources and amounts of certain donations made during and after a President's term in office.

II. Background and Need for the Legislation

History of the Presidential Library System

The Presidential library system formally began in 1939, when President Franklin D. Roosevelt developed the concept of a federally maintained Presidential library to house his Presidential papers and other historical materials. Friends of President Roosevelt formed a corporation to raise funds for the construction of a library located on the grounds of his family home in Hyde Park, New York. President Roosevelt's decision to create a library came from his belief that Presidential papers are an important part of the Nation's heritage and should be accessible to the public. Today the National Archives and Records Administration (NARA) administers a nationwide network of Presidential libraries, beginning with the 31st President of the United States, Herbert Hoover. The libraries are a valuable resource for historians, academics, researchers and the public.

The Presidential Libraries Act of 1955 (P.L. 84–373) established the basic policy for creating federally maintained Presidential libraries. To establish a Presidential library, friends, family members and associates of an incumbent President generally establish a private foundation or other organization to receive contributions to obtain a site and to construct the facility. Once completed, the facility is turned over, along with an operating endowment, to NARA, which is headed by the Archivist of the United States. NARA operates and maintains Presidential libraries using the operating endowment (described below) and federally appropriated funds. The libraries are typically located either in the former President's hometown or on a university campus. They house the official records and papers of former Presidents, as well as documentary materials of the President's family and associates.

To address concerns about the increasing taxpayer cost of Presidential libraries, Congress amended the Presidential Libraries Act in 1986 (P.L. 99–323), establishing certain reporting requirements for NARA, architectural and design conditions, and fiscal limitations regarding future Presidential libraries, including a requirement that an operating endowment be provided. The endowment requirement is intended to offset the building operation costs and to reduce the amount of appropriations needed for building operations. That endowment was set at 20% of the cost of the building for libraries of 70,000 square feet or less, and for larger facilities this percentage increases in accordance with the size of the facility. The Consolidated Appropriations Act of 2003 increased the required endowment to at least 40% of the cost of the building for future presidents (P.L. 108–7).[1]

The Need for Disclosure of Presidential Library Donations

Over the years, Presidential libraries have evolved into multipurpose institutes that, in addition to housing the official papers of a former President, can include museums, conference facilities, and classrooms. The cost of these facilities can be substantial. Press accounts indicate that the George H.W. Bush library center cost $83

[1] The new requirements apply to "any President who takes the oath of office as President for the first time on or after July 1, 2002."

million to build, the William J. Clinton library center cost $165 million to build, and George W. Bush library and think tank in Texas may cost as much as $500 million.[2]

Fund-raising for Presidential libraries can begin well before a President leaves office. Under current law, there are no limits on the amount of money Presidents and their associates may raise for a Presidential library, no constraints on when fund-raising may begin, and no limits on the size of donations. Foreign governments, foreign individuals, and foreign corporations are not prohibited from making donations to Presidential libraries. Unlike the disclosure of contributions to federal campaigns under the Federal Election Campaign Act (2 U.S.C. §§ 431 et seq.) or the disclosure of the amounts of interested parties spend to lobby Congress and the federal government under the Lobbying Disclosure Act (2 U.S.C. §§ 1601 et seq.), there is no requirement that Presidential libraries disclose donations. Under the Honest Leadership and Open Government Act of 2007 (P.L. 110–81), registered lobbyists will be required, beginning in 2008, to disclose on a semiannual basis contributions equal to or exceeding $200 made to Presidential library foundations. Building on this first step toward disclosure, H.R. 1254 will create a comprehensive reporting system.

Witnesses at a March 1, 2007 hearing conducted by the House Committee on Oversight and Government Reform supported the need for disclosure of presidential library donations. They argued that undisclosed contributions create a perception of impropriety and noted the benefits of disclosure to public confidence in the political process. Sheila Krumholz, the Executive Director of the Center for Responsive Politics testified:

> Herein lies the central concern: that those who donate money to presidential libraries will in return receive special access to, and favors from, the president and the federal government. To minimize the potential for that sort of payback, and to build trust among a citizenry that already questions the ethics of elected officials, public disclosure of contributions to presidential library projects seems both appropriate and wise.

Celia Viggo Wexler, Vice President for Advocacy of Common Cause, stated in her testimony that requiring disclosure is important even after a President leaves office because many former Presidents are active and influential in the public sphere. Ms. Wexler noted that "[g]iven the increasingly ambitious scope of the presidential libraries and museums, centers, and other entities linked to them, presidential fundraising may continue long after structures are built, and decades after a president held office."

III. Legislative History

H.R. 1254 was introduced on March 1, 2007, and referred to the Committee on Oversight and Government Reform, which held a hearing on contributions to Presidential libraries on March 1, 2007. The witnesses were Sharon Fawcett, Assistant Archivist for Presi-

[2] See A Room of His Own, The Economist (Mar. 15, 2007); SMU Has the Inside Track on Presidential Library, The Fort Worth Star-Telegram (Dec. 22, 2006); Bush's Dream Library, National Journal (Dec. 2, 2006); House Bill Could Force Library Donors Out of Shadows, The Hill (Nov. 29, 2006).

dential Records, National Archives and Records Administration; Celia Viggo Wexler, Vice President for Advocacy, Common Cause; and Sheila Krumholz, Executive Director, Center for Responsive Politics. The Committee on Oversight and Government Reform held a markup to consider H.R. 1254 on March 8, 2007, and ordered the bill to be reported by voice vote. On March 14, 2007, the House passed H.R. 1254 under suspension of the rules by a vote of 390 to 34.

On March 15, 2007, the bill was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. On August 1, 2007, the Committee considered H.R. 1254 and ordered the bill reported favorably by voice vote as amended by the amendment offered by Chairman Lieberman. The Lieberman amendment, which was approved by voice vote, provided separate requirements for disclosure of donations while a President is in office and, after a President leaves office, when NARA has assumed responsibility for the facility.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the short title of H.R. 1254 is the "Presidential Library Donation Reform Act of 2007."

Sec. 2. Presidential libraries

Subsection 2(a) adds a new subsection (h) to section 2112 of title 44, United States Code.

Subsection (h)(1)(A) requires Presidential library fundraising organizations to submit, on a quarterly basis, information about every contributor who gave the organization contributions (whether monetary or in-kind) totaling $200 or more during the quarterly period, with respect to a Presidential archival depository (including a depository of a sitting President) which has not been turned over to NARA. This amount parallels the threshold for disclosing contributions to federal political committees under the Federal Election Campaign Act, 2 U.S.C. § 434(b). Subsection (h)(1)(B) requires the reporting of contributions (whether monetary or in-kind) totaling $1,250 or more for the quarterly period with respect to a Presidential archive which has been turned over to NARA. This threshold corresponds, on an annual basis, to the requirement that tax-exempt foundations must keep and report to the IRS information regarding certain contributions totaling $5,000 or more per year on IRS Form 990–PF, Schedule B.

Subsection (h)(2) establishes that those reports should be made to NARA, the Committee on Oversight and Government Reform in the House of Representatives, and the Committee on Homeland Security and Governmental Affairs in the Senate and requires that information to be provided by April 15, July 15, October 15, and January 15 (for the fourth quarterly filing).

Subsection (h)(2)(C) establishes that reporting will continue during the lifetime of the President whose archives benefit from fundraising of a Presidential library fundraising organization.

Subsection (h)(3)(A) defines a Presidential library fundraising organization as any organization established for the purpose of raising funds for creating, maintaining, expanding or conducting activi-

ties at a Presidential archival depository or related facilities. Subsection (h)(3)(B) establishes that Presidential library fundraising organizations must submit the amount of each contribution, the name and address of the donor, the date of the contribution, and, if the donor is an individual, the occupation of the donor.

Subsection (h)(4) requires the Archivist to make the information submitted publicly available in a free, searchable, sortable, downloadable database.

Subsection (h)(5)(A) prohibits a contributor from knowingly and willfully submitting false material information or omitting material information with respect to a contribution. Under subsection (h)(5)(B), a violation of (h)(5)(A) is treated as a felony, subject to the penalties described in 18 U.S.C. § 1001.

Subsection (h)(6)(A) prohibits an organization receiving contributions for a Presidential library from knowingly and willfully submitting false material information, or omitting material information, regarding contributions required to be disclosed under this bill. Under subsection (h)(6)(B), a violation of subsection (h)(6)(A) is treated as a felony, subject to the penalties described in 18 U.S.C. § 1001.

Subsection (h)(7)(A) prohibits any person from knowingly and willfully making a contribution to a Presidential library in the name of another person or permitting his or her name to be used to make such a contribution. This subsection also prohibits the knowing and willful acceptance of contributions made by one person in the name of another person. Under subsection (h)(7)(B), a violation of subsection (h)(7)(A) is subject to the penalties set forth in 2 U.S.C. § 437g(d), the Federal Election Campaign Act, and is treated as if the violation were a violation of 2 U.S.C. § 441b(b)(3) of that Act, a cross-reference that operates to apply the sanctions described in section 437g(d)(1)(B).

Subsection (h)(8) authorizes NARA to promulgate regulations to implement the provisions of subsection (h).

Section 2(b) of H.R. 1254 provides that the bill covers organizations that were established to raise funds for a Presidential library before, on or after the date of enactment of this bill. It also provides that the requirement to disclose information about contributions applies only to contributions made after the date of the bill's enactment.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The enactment of this legislation will not have significant regulatory impact.

VI. Congressional Budget Office Estimate

August 16, 2007.

Hon. Joseph I. Lieberman,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1254, the Presidential Library Donation Reform Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Paige Piper/Bach (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1254—Presidential Library Donation Reform Act of 2007

H.R. 1254 would require any organization that raises funds for a Presidential library to disclose the sources and amounts of such funds on a quarterly basis. The legislation would apply to donations of $200 or greater while the current President is in office and during the period before the federal government takes possession of the library. After the federal government takes possession of the library, this reporting requirement would continue for any donations of $1,250 or more during the President's lifetime. Additionally, H.R. 1254 would require fund-raising organizations to provide this information to the National Archives and Records Administration (NARA) and the Congress. The legislation would direct NARA to make this information public in a freely available searchable database. Finally, H.R. 1254 would establish criminal penalties, including fines, for violations of its provisions.

Based on information from NARA, CBO estimates that implementing H.R. 1254 would cost $1 million in 2008 and about $5 million over the 2008–2012 period, assuming appropriation of the necessary amounts. That estimate assumes NARA would spend $1 million in 2008 to establish the proposed database and $800,000 annually thereafter to update and maintain it. We also estimate that any increases in federal spending for law enforcement, court proceedings, or prison operations related to criminal violations under H.R. 1254, which would be subject to appropriation, would be insignificant.

Enacting the legislation could affect direct spending and receipts, but we estimate that any impact would not be significant. Because those prosecuted and convicted under H.R. 1254 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending under H.R. 1254 would be negligible because of the small number of cases involved.

H.R. 1254 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 1254 would impose a private-sector mandate, as defined in UMRA, on organizations established for the purpose of raising funds for a Presidential library. The legislation would require those organizations to submit quarterly reports to the Administration and certain Congressional committees detailing the sources and amounts of certain contributions they receive. The reports would have to be submitted for a period of time as determined by conditions in the legislation. The cost for such organizations to report the mandated information would be minimal. CBO estimates, therefore, that the direct cost of the mandate would fall well below

the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

On March 9, 2007, CBO transmitted a cost estimate for H.R. 1254 as ordered reported by the House Committee on Oversight and Government Reform on March 8, 2007. The two versions of the legislation are substantively similar, and our estimates of impacts on the federal budget and the private sector are the same.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

VII. Changes in Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 1254 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

* * * * * * *

CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

* * * * * * *

§ 2112. Presidential archival depository

* * * * * * *

(h)(1) Any Presidential library fundraising organization shall submit on a quarterly basis, in accordance with paragraph (2), information with respect to every contributor who—

(A) with respect to a Presidential archival depository (including a depository of a President who currently holds the Office of President) for which the Archivist has not accepted, taken title to, or entered into an agreement to use any land or facility for the archival depository, gave the organization a contribution or contributions (whether monetary or in-kind) totaling $200 or more for the quarterly period; or

(B) with respect to a Presidential archival depository for which the Archivist has accepted, taken title to, or entered into an agreement to use any land or facility for the archival depository, gave the organization a contribution or contributions (whether monetary or in-kind) totaling $1,250 or more for the quarterly period.

(2) For purposes of paragraph (1)—

(A) the entities to which information shall be submitted under that paragraph are the Administration, the Committee on Oversight and Government Reform of the House of Representatives,

and the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the dates by which information shall be submitted under that paragraph are April 15, July 15, October 15, and January 15 of each year and of the following year (for the fourth quarterly filing);

(C) the requirement to submit information under that paragraph shall continue to apply to a Presidential library fundraising organization during the lifetime of the President whose archives benefit from such fundraising.

(3) In this subsection:

(A) The term "Presidential library fundraising organization" means an organization that is established for the purpose of raiding funds for creating, maintaining, expanding, or conducting activities at—

(i) a Presidential archival depository; or

(ii) any facilities relating to a Presidential archival depository.

(B) The term "information" means the following:

(i) The amount or value of each contribution made by a contributor referred to in paragraph (1) in the quarter covered by the submission.

(ii) The source of each such contribution, and the address of the entity or individual that is the source of the contribution.

(iii) If the source of such a contribution is an individual, the occupation of the individual.

(iv) the date of each such contribution.

(4) The Archivist shall make available to the public through the Internet (or successor technology readily available to the public) as soon as is practicable after each quarterly filing any information that is submitted under paragraph (1). The information shall be made available without a fee or other access charge, in a searchable, sortable, and downloadable database.

(5)(A) It shall be unlawful for any person who makes a contribution described in paragraph (1) to knowingly and willfully submit false material information or omit material information with respect to the contribution to an organization described in such paragraph.

(B) The penalties described in section 1001 of title 18, United States Code, shall apply with respect to a violation of subparagraph (A) in the same manner as a violation described in such section.

(6)(A) It shall be unlawful for any Presidential library fundraising organization to knowingly and willfully submit false material information or omit material information under paragraph (1).

(B) The penalties described in section 1001 of title 18, United States Code, shall apply with respect to a violation of subparagraph (A) in the same manner as a violation described in such section.

(7)(A) It shall be unlawful for a person to knowingly and willfully—

(i) make a contribution described in paragraph (1) in the name of another person;

(ii) permit his or her name to be used to effect a contribution described in paragraph (1); or

(iii) accept a contribution described in paragraph (1) that is made by one person in the name of another person.

(B) The penalties set forth in section 309(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)) shall apply to a violation of subparagraph (A) in the same manner as if such violation were a violation of section 316(b)(3) of such Act (2 U.S.C. 441b(b)(3)).

(8) The Archivist shall promulgate regulations for the purpose of carrying out this subsection.

○