

# **George W. Bush Presidential Library**

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Horn Bill

HR 4187 IH

107th CONGRESS

2d Session

**H. R. 4187**

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****APRIL 11, 2002**

Mr. HORN (for himself, Ms. SCHAKOWSKY, Mr. BURTON of Indiana, Mr. WAXMAN, Mr. OSE, Mr. FRANK, Mr. MCDERMOTT, Mr. UDALL of Colorado, Mr. BENTSEN, Mr. ALLEN, Mr. BLAGOJEVICH, Mr. CLAY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. KUCINICH, Mr. LANTOS, Mr. LYNCH, Mrs. MALONEY of New York, Ms. NORTON, Mr. OWENS, Mr. TOWNS, Mr. LATOURETTE, and Mr. BAIRD) introduced the following bill; which was referred to the Committee on Government Reform

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**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 constitutionally based privilege against disclosure of Presidential records.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Presidential Records Act Amendments of 2002'.

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

(a) IN GENERAL- Chapter 22 of title 44, United States Code, is amended by adding at the end the following:

**'Sec. 2208. Claims of constitutionally based privilege against disclosure**

(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist

shall--

`(A) promptly provide notice of such determination to--

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

`(ii) the incumbent President; and

`(B) make the notice available to the public.

`(2) The notice under paragraph (1)--

`(A) shall be in writing; and

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

`(3)(A) Upon the expiration of 20 days (excepting Saturdays, Sundays, and legal public holidays) following provision of notice under paragraph (1)(A), the Archivist shall make available to the public the record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President a claim of constitutionally based privilege against disclosure that meets the requirements of paragraph (4).

`(B) The Archivist may extend the 20-day period for not more than 20 additional days (excepting Saturdays, Sundays, and legal public holidays) if the Archivist determines, based on a showing by the former President or the incumbent President, that such an extension is necessary to allow an adequate review of the record.

`(4) A claim of constitutionally based privilege against disclosure meets the requirements of this paragraph if it--

`(A) is in writing;

`(B) specifies the record (or reasonably segregable portion of a record) to which the claim applies;

`(C) is signed by the former President or incumbent President making the claim; and

`(D) states the nature of the privilege and the specific grounds for the claim.

`(b) The Archivist shall provide a copy of each claim of constitutionally based privilege against disclosure of a Presidential record--

`(1) to the person seeking the record, if any;

`(2) to the chairman and ranking minority member of each of the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate; and

(3) upon request, to any member of the public.

(c)(1) The Archivist shall not release a Presidential record that is subject to a privilege claim submitted by a former President until the expiration of the 20-day period (excluding Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist receives the claim.

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

(d)(1) The Archivist shall not release a Presidential record that is subject to a privilege claim submitted by the incumbent President unless--

(A) the incumbent President withdraws the privilege claim; or

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

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

(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpoena, judicial subpoena, or judicial process.'

(b) CONFORMING AMENDMENTS- (1) Section 2204(d) of title 44, United States Code, is amended by inserting ', except section 2208,' after 'chapter'.

(2) Section 2207 of title 44, United States Code, is amended in the second sentence by inserting ', except section 2208,' after 'chapter'.

(c) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 22 of title 44, United States Code, is amended by adding at the end the following:

'2208. Claims of constitutionally based privilege against disclosure.'

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

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

*END*

4/15/02

THE WHITE HOUSE  
WASHINGTON

Beth-

Would you please  
write a letter to Chairman Horn  
correcting what is wrong  
in his story and offering  
to meet with him -

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# Historians say Bush's order makes job harder

## New directive grants presidents more control over their papers

By LYS MENDEZ  
Washington Bureau

WASHINGTON — A move to overturn President Bush's executive order giving current and former presidents the power to limit the release of their presidential papers has attracted the support of several prominent historians.

They warned a House committee last week that the president's directive would do nothing to protect national security and would force historians into costly legal battles to gain access to the material.

The historians testified at a hearing chaired by Rep. Stephen Horn, R-Calif., on his bill to overturn Mr. Bush's executive order. It would restore the statutory process for reviewing presidential records to determine the validity of any claims of executive privilege.

President Ronald Reagan's presidential papers recently were released after three delays ordered



RON EDMONDS/Associated Press

## President Bush's order extends executive privilege to the vice president.

by Mr. Bush. About 150 documents are still being held, but historians said nothing in the 68,000 documents released represents a threat to national security.

"There might have been some embarrassment in terms of recommendations for appointments, but no breach on national security," said Joan Hoff, director of the Contemporary History Institute at

Ohio University and former president of the Organization of American Historians.

Stanley Kutler, professor at the University of Wisconsin Law School, said that the papers yet to be released hold the "juiciest stuff" with information on Supreme Court Justice Clarence Thomas, retired Gen. Colin Powell, who is now secretary of state, and former Vice President George Bush.

The release of presidential papers sometimes helps more than harms a president's reputation, said Robert Dallek, citing the case of former Lyndon B. Johnson. Mr. Dallek wrote a two-volume biography of the former president.

"Johnson's reputation could go nowhere but up," Mr. Dallek said. "It was favorable to him when the papers were released."

Mr. Bush's executive order requires a specific need for the information to be demonstrated, extends executive privilege to the vice president, and allows former presidents to make decisions about their presidential papers.

The historians said they are worried about the legal responsibilities that the executive order places

on researchers. The executive order would place the burden of proof to overturn the restrictions on the researcher. With research already expensive and time-consuming, Ms. Hoff fears the order will discourage work on presidential papers.

"It is a tremendous disincentive to those that do this for a living," said Richard Reeves, a historian who has written books on former presidents John F. Kennedy and

Richard Nixon. "We can barely buy a house, let alone sue the government."

The White House defends the order. "We believe it does a good job, as we've seen in the release of former President Reagan's records," spokeswoman Anne Womack told *The Washington Post* last week.

The 1978 Presidential Records Act made presidential papers pub-

lic property, requiring the archivist of the United States to make the records accessible.

Mr. Reagan issued an executive order that required the archivist to give a 30-day notice to incumbent and former presidents before the release of their papers. Mr. Bush's executive order allows incumbent and former presidents to delay release without claiming executive privilege.