110TH CONGRESS
1ST SESSION

H. R. 1255

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

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.

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”.
SECTION 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:

"§ 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 the 20-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides 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 notification of a claim of con-
stitutionally based privilege against disclosure under sub-
section (b).

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

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

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

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

“(c)(1) The Archivist shall not make publicly avail-
able a Presidential record that is subject to a privilege
claim asserted 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
is notified of 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 make publicly avail-
able a Presidential record that is subject to a privilege
claim asserted 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.”


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