

112TH CONGRESS
1ST SESSION

H. R. 3071

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

SEPTEMBER 29, 2011

Mr. TOWNS (for himself, Mr. CUMMINGS, Mrs. MALONEY, Ms. NORTON, Mr. KUCINICH, Mr. TIERNEY, Mr. CLAY, Mr. LYNCH, Mr. COOPER, Mr. CONNOLLY of Virginia, Mr. QUIGLEY, Mr. DAVIS of Illinois, Mr. BRALEY of Iowa, Mr. WELCH, Mr. YARMUTH, Mr. MURPHY of Connecticut, and Ms. SPEIER) 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 2011”.

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

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

7 **“§ 2208. Claims of constitutionally based privilege**
8 **against disclosure**

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

13 “(A) promptly provide notice of such deter-
14 mination to—

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

17 “(ii) the incumbent President; and

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

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

20 “(A) shall be in writing; and

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

23 “(3)(A) Upon the expiration of the 60-day period (ex-
24 cepting Saturdays, Sundays, and legal public holidays) be-
25 ginning on the date the Archivist provides notice under
26 paragraph (1)(A), the Archivist shall make available to the

1 public the Presidential record covered by the notice, except
2 any record (or reasonably segregable part of a record) with
3 respect to which the Archivist receives from a former
4 President or the incumbent President notification of a
5 claim of constitutionally based privilege against disclosure
6 under subsection (b).

7 “(B) A former President or the incumbent President
8 may extend the period under subparagraph (A) once for
9 not more than 30 additional days (excepting Saturdays,
10 Sundays, and legal public holidays) by filing with the Ar-
11 chivist a statement that such an extension is necessary
12 to allow an adequate review of the record.

13 “(C) Notwithstanding subparagraphs (A) and (B), if
14 the 60-day period under subparagraph (A), or any exten-
15 sion of that period under subparagraph (B), would other-
16 wise expire during the 6-month period after the incumbent
17 President first takes office, then that 60-day period or ex-
18 tension, respectively, shall expire at the end of that 6-
19 month period.

20 “(b)(1) For purposes of this section, the decision to
21 assert any claim of constitutionally based privilege against
22 disclosure of a Presidential record (or reasonably seg-
23 regable part of a record) must be made personally by a
24 former President or the incumbent President, as applica-
25 ble.

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

8 “(c)(1) If a claim of constitutionally based privilege
9 against disclosure of a Presidential record (or reasonably
10 segregable part of a record) is asserted under subsection
11 (b) by a former President, the Archivist shall consult with
12 the incumbent President, as soon as practicable during the
13 period specified in paragraph (2)(A), to determine whether
14 the incumbent President will uphold the claim asserted by
15 the former President.

16 “(2)(A) Not later than the end of the 30-day period
17 beginning on the date of which the Archivist receives noti-
18 fication from a former President of the assertion of a
19 claim of constitutionally based privilege against disclosure,
20 the Archivist shall provide notice to the former President
21 and the public of the decision of the incumbent President
22 under paragraph (1) regarding the claim.

23 “(B) If the incumbent President upholds the claim
24 of privilege asserted by the former President, the Archivist
25 shall not make the Presidential record (or reasonably seg-

1 regable part of a record) subject to the claim publicly
2 available unless—

3 “(i) the incumbent President withdraws the de-
4 cision upholding the claim of privilege asserted by
5 the former President; or

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

8 “(C) If the incumbent President determines not to
9 uphold the claim of privilege asserted by the former Presi-
10 dent, or fails to make the determination under paragraph
11 (1) before the end of the period specified in subparagraph
12 (A), the Archivist shall release the Presidential record sub-
13 ject to the claim at the end of the 90-day period beginning
14 on the date on which the Archivist received notification
15 of the claim, unless otherwise directed by a court order
16 in an action initiated by the former President under sec-
17 tion 2204(e) of this title or by a court order in another
18 action in Federal court.

19 “(d) The Archivist shall not make publicly available
20 a Presidential record (or reasonably segregable part of a
21 record) that is subject to a privilege claim asserted by the
22 incumbent President unless—

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

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

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

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

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

17 (c) CONFORMING AMENDMENTS.—(1) Section
18 2204(d) of title 44, United States Code, is amended by
19 inserting “, except section 2208,” after “chapter”.

20 (2) Section 2205 of title 44, United States Code, is
21 amended by inserting “and 2208” after “2204”.

22 (3) Section 2207 of title 44, United States Code, is
23 amended in the second sentence by inserting “, except sec-
24 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 (e) RULE OF CONSTRUCTION.—Nothing in the
5 amendment made by subsection (c)(3) shall be construed
6 to—

7 (1) affect the requirement of section 2207 of
8 title 44, United States Code, that Vice Presidential
9 records shall be subject to chapter 22 of that title
10 in the same manner as Presidential records; or

11 (2) affect any claim of constitutionally based
12 privilege by a President or former President with re-
13 spect to a Vice Presidential record.

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