

105TH CONGRESS
2D SESSION

S. 2076

To provide reporting requirements for the assertion of executive privilege,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 1998

Mr. ASHCROFT (for himself and Mr. McCONNELL) introduced the following
bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide reporting requirements for the assertion of
executive privilege, and for other purposes.

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 “Executive Accountabil-
5 ity Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Grand jury investigations into Presidential
9 communications have been, to date, extraordinary
10 and rare occurrences, and hopefully, will remain that

1 way. Congressional oversight hearings, by contrast,
2 are commonplace.

3 (2) If judicial decisions permit presidential
4 aides to withhold crucial information from a grand
5 jury investigating criminal misconduct, congressional
6 inquiries will be stymied by similar claims of execu-
7 tive privilege.

8 (3) For these reasons, the proper scope of exec-
9 utive privilege is of concern to every Member of Con-
10 gress, and every Member of Congress has an interest
11 in being notified of assertions of executive privilege
12 by the President and in having the opportunity to
13 file amicus briefs in appropriate cases.

14 (4) In the context of the current litigation be-
15 fore Judge Norma Holloway Johnson, the President
16 failed to acknowledge publicly that he asserted exec-
17 utive privilege to shield information from the grand
18 jury.

19 (5) Indeed, lawyers for the President have pro-
20 tested that the outcome of Judge Johnson's order
21 rejecting the President's claim of executive privilege
22 became public.

23 (6) As a consequence, Members of Congress
24 have not had a proper basis to decide whether to file
25 amicus briefs apprising the court of the unique in-

1 terests and views of Congress with respect to execu-
2 tive privilege.

3 **SEC. 3. REPORTING REQUIREMENTS.**

4 (a) INITIAL REPORT.—Whenever the President as-
5 serts executive privilege in a judicial action or proceeding,
6 the President shall promptly report to Congress and pro-
7 vide an explanation of the reasons for such assertion in
8 such detail as is consistent with national security.

9 (b) REPORT BY PRESIDING JUDGE OF ASSERTION.—
10 Whenever, in a judicial action or proceeding, the President
11 asserts executive privilege, it shall be the duty of the pre-
12 siding judicial officer in that action or proceeding prompt-
13 ly to report the assertion to Congress.

14 (c) REPORT BY PRESIDING JUDGE OF DISPOSI-
15 TION.—Whenever in a judicial action or proceeding, the
16 President asserts executive privilege, it shall be the duty
17 of the presiding judicial officer in that action or proceed-
18 ing promptly to report to Congress any order or ruling
19 disposing of that claim and provide an explanation of the
20 reasons for such disposition in such detail as is consistent
21 with national security.

22 (d) AMICUS BRIEFS.—Any Member of either House
23 of Congress shall have the right to file an amicus brief,
24 regarding an assertion of executive privilege by the Presi-

1 dent, in any judicial action or proceeding in which that
2 assertion is made.

3 (e) REPORT CONCERNING DECISION TO APPEAL.—

4 Whenever the President decides to appeal an adverse dis-
5 position of a claim of executive privilege or to file a peti-
6 tion for certiorari in response to such adverse disposition,
7 the President shall promptly report the decision to Con-
8 gress.

9 (f) ADDITIONAL REQUIREMENT.—Whenever the
10 President asserts executive privilege in any forum, the
11 President shall forward to Congress any written legal
12 opinion regarding the lawfulness of the assertion redacted
13 as is consistent with national security.

14 (g) REPORT TO CONGRESS.—For purposes of this
15 Act, providing notice or a report to the Senate Majority
16 and Minority Leaders and the Speaker of the House and
17 House Minority Leader shall constitute notice to Con-
18 gress.

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