

# Union Calendar No. 491

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4187

[Report No. 107-790]

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.

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## 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

NOVEMBER 22, 2002

Additional sponsors: Mr. BALDACCI, Mr. GILMAN, Mr. GEORGE MILLER of California, Mr. VISCLOSKY, Mr. DEFazio, Mr. ROEMER, Mr. SANDERS, Mr. NADLER, Ms. HOOLEY of Oregon, Mr. SNYDER, Ms. VELÁZQUEZ, Mr. BARRETT, Mr. PAUL, Mr. PRICE of North Carolina, Mr. DOGGETT, Mr. SPRATT, Mr. TIERNEY, Mr. INSLEE, Mr. ENGEL, Ms. WATSON, Mrs. MORELLA, and Ms. LOFGREN

Deleted sponsor: Mr. SHAYS (added April 23, 2002; deleted May 20, 2002)

NOVEMBER 22, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 11, 2002]

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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.

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 Act*  
5 *Amendments of 2002”.*

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

9       *(a) IN GENERAL.—Chapter 22 of title 44, United*  
10 *States Code, is amended by adding at the end the following:*

11 **“§2208. Claims of constitutionally based privilege**  
12                   **against disclosure**

13       *“(a)(1) When the Archivist determines under this*  
14 *chapter to make available to the public any Presidential*  
15 *record that has not previously been made available to the*  
16 *public, the Archivist shall—*

1           “(A) promptly provide notice of such determina-  
2           tion to—

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

5                   “(ii) the incumbent President; and

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

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

8                   “(A) shall be in writing; and

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

11           “(3)(A) Upon the expiration of the 20-day period  
12           (excepting Saturdays, Sundays, and legal public holidays)  
13           beginning on the date the Archivist provides notice under  
14           paragraph (1)(A), the Archivist shall make available to the  
15           public the record covered by the notice, except any record  
16           (or reasonably segregable part of a record) with respect to  
17           which the Archivist receives from a former President or the  
18           incumbent President notification of a claim of constitu-  
19           tionally based privilege against disclosure under subsection  
20           (b).

21           “(B) A former President or the incumbent President  
22           may extend the period under subparagraph (A) once for not  
23           more than 20 additional days (excepting Saturdays, Sun-  
24           days, and legal public holidays) by filing with the Archivist

1 *a statement that such an extension is necessary to allow*  
2 *an adequate review of the record.*

3       “(C) *Notwithstanding subparagraphs (A) and (B), if*  
4 *the period under subparagraph (A), or any extension of that*  
5 *period under subparagraph (B), would otherwise expire be-*  
6 *tween January 19 and July 20 of the year in which the*  
7 *incumbent President first takes office, then such period or*  
8 *extension, respectively, shall expire on July 20 of that year.*

9       “(b)(1) *For purposes of this section, a claim of con-*  
10 *stitutionally based privilege against disclosure shall be as-*  
11 *serted personally by a former President or the incumbent*  
12 *President, as applicable.*

13       “(2) *A former President or the incumbent President*  
14 *shall notify the Archivist, the Committee on Government*  
15 *Reform of the House of Representatives, and the Committee*  
16 *on Governmental Affairs of the Senate of a privilege claim*  
17 *under paragraph (1) on the same day that the claim is as-*  
18 *serted under paragraph (1).*

19       “(c)(1) *The Archivist shall not make publicly available*  
20 *a Presidential record that is subject to a privilege claim*  
21 *asserted by a former President until the expiration of the*  
22 *20-day period (excluding Saturdays, Sundays, and legal*  
23 *public holidays) beginning on the date the Archivist is noti-*  
24 *fied of the claim.*

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

5       “(d)(1) The Archivist shall not make publicly available  
6 a Presidential record that is subject to a privilege claim  
7 asserted by the incumbent President unless—

8               “(A) the incumbent President withdraws the  
9 privilege claim; or

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

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

15       “(e) The Archivist shall adjust any otherwise applica-  
16 ble time period under this section as necessary to comply  
17 with the return date of any congressional subpoena, judicial  
18 subpoena, or judicial process.”.

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

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

          “2208. *Claims of constitutionally based privilege against disclosure.*”.

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

5           *Executive Order number 13233, dated November 1,*  
6 *2001 (66 Fed. Reg. 56025), shall have no force or effect.*



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