TRIBUTE TO MAJOR GENERAL PAUL J. GLAZAR

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. SAXTON. Mr. Speaker, I rise today to add to the many phrases of praise already accorded our departing New Jersey State National Guard Adjutant General, Major Paul J. Glazar. General Glazar departs this post after eight years of superb service. He has set the mark high for all others who follow in his footsteps.

General Glazar assumed the duties as The State Adjutant General for the New Jersey Army National Guard on February 24, 1994. As the Adjutant General he was responsible for the expansion of the Guard's command and control high technology training centers. His foresight in standing up these training centers for the education of staffs enabled the New Jersey National Guard to act as the focal point for command and control services on September 11, 2001. Fort Dix's ability to act in this key function can be traced back to outstanding leadership of General Glazar. Additionally, General Glazar demonstrated outstanding leadership in modernizing and expanding important Veteran projects for the state to include the Brigadier General William C. Doyle Veterans Cemetery and the New Jersey Veterans Memorial Home in Menlo Park.

Thankfully, we will not be losing General Glazar's leadership, since he will remain inside the New Jersey National Guard structure.

It is with tremendous pride and honor that I pay tribute to a great General who served New Jersey so honorably.

INTRODUCTION OF THE PRESIDENTIAL RECORDS ACT AMENDMENTS OF 2002

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. HORN. Mr. Speaker, today I am introducing the Presidential Records Act Amendments Act of 2002. Prompt enactment of this bill will fix a serious, but in my view readily solvable, problem that has developed in the implementation of the Presidential Records Act of 1978. 1 am pleased that a number of my colleagues from both sides of the aisle have joined me as co-sponsors of the bill.

The Presidential Records Act of 1978 was a landmark law. It declared for the first time that the official records of a former President belong to the American people. It gave custody of a former President's records to the Archivist of the United States and imposed upon the Archivist ''an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.''

The Act built in safeguards over the disclosure of presidential records. It allowed former Presidents to restrict disclosure of certain confidential records for up to 12 years after they leave office. The authors of the Act considered this 12-year embargo sufficient to prevent a ''chilling effect'' on a President's ability to get candid and confidential advice. In this regard, they were mindful of the Supreme Court's observation in Nixon v. Administrator of General Services, 433 U.S. 425 (1977), that the expectation of confidentiality in presidential communications ''has always been limited and subject to erosion over time after an administration leaves office.'' The Act also permanently shielded from public release records containing military and diplomatic secrets or other categories of information whose disclosure would not be in the national interest.

The Act first applied to the records of former President Ronald Reagan. Therefore, records that former President Reagan restricted for 12 years should have become publicly available in February 2001. Unfortunately, it took one full year after the release date envisioned by the Act for just a relatively small portion of those records to be made public. One reason for this is that the records have undergone lengthy reviews to determine whether the former or incumbent President should attempt to prevent their release by claiming ''executive privilege.''

For much of last year, release of the Reagan records was delayed while the current Administration repeatedly extended the deadline for making executive privilege decisions under an Executive Order that President Reagan had issued before he left office. On November 1, 2001, President Bush issued a new, and much more restrictive, Executive Order to govern the review of a former President's records for possible executive privilege claims.

The new Executive Order No. 13233 starts with a ''background'' section that asserts an extremely expansive view of the scope of executive privilege. It requires the Archivist to notify both the former and incumbent Presidents of requests for access to presidential records. It then prohibits the Archivist from releasing the records ''unless and until'' both the former President and incumbent President agree to authorize access, or unless the Archivist is directed to release the records by a final and non-appealable court order. The Executive Order makes any claim of executive privilege by either the former or incumbent President binding on the Archivist. Indeed, the Archivist must comply with a privilege claim by a former President even if the incumbent President does not believe the claim is well founded. The Order sets a target date of 90 days for the review of records. However, under the terms of the Order, the review periods available to the former and incumbent Presidents are essentially open-ended. A former or incumbent President can indefinitely postpone public disclosure of records simply by withholding approval for their release, without ever needing to claim executive privilege.

Last November, the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, which I chair, held a hearing on implementation of the Presidential Records Act. At that hearing, lawyers, historians, and other experts criticized the Executive Order on legal and policy grounds. Members of Congress from both sides of the aisle voiced similar criticisms. Following the hearing, a host of archivists, historians and others contacted me to express their concerns over the Executive Order. Finally, several groups have filed a lawsuit to overturn the Executive Order.

I agree that the Executive Order violates the letter and spirit of the Presidential Records Act. However, I do not think we should wait perhaps years for the lawsuit to run its course. We need to act now in order to get implementation of the Act back on track. I believe we can solve the problem in a way that protects the constitutional prerogatives of former and incumbent Presidents while preserving the Act's intent of publicly disclosing presidential records as promptly and completely as possible. That is what my bill seeks to do.

Like the Executive Order, my bill establishes a process for the consideration of executive privilege claims. Like the Executive Order, it requires advance notice to the former and incumbent Presidents before presidential records are released. This permits them to review the records in order to decide whether to claim privilege. Also like the Executive Order, my bill requires the Archivist to withhold records (or parts of records) for which the *incumbent* President claims privilege. In this event, a requester would have the burden of challenging a privilege claim in court.

However, my bill differs from the Executive Order in several ways. The bill does not attempt to define the scope of executive privilege. It leaves this to the courts. The bill limits the amount of time the former and incumbent President can take to review records and claim privilege. The basic review period is 20 working days, which is the same limit imposed on agencies under the Freedom of Information Act. This period may be extended for not more than another 20 working days if the Archivist determines that an extension is necessary to permit adequate review. If there is no claim of privilege within the applicable review period, the Archivist must release the records.

The other key difference between my bill and the Executive Order concerns what happens if a former President claims privilege. As noted previously, the Executive Order forces the Archivist to withhold records any time a former President claims privilege. The requester then has the burden of going to court to challenge the privilege claim. This is the feature of the Executive Order most clearly at odds with the Presidential Records Act. The bill reverses this burden. If a former President claims privilege, the Archivist will withhold the records for an additional 20 days in order to give the former President time to file suit to enforce his privilege claim. However, the Archivist will then release the records absent a court order to the contrary.

I believe this is a reasonable approach, and one that is consistent with the intent of the Presidential Records Act. The Act already provides for lawsuits by a former President to vindicate his rights and privileges. Furthermore, the Act already protects from disclosure those categories of information that would ordinarily be subject to executive privilege claims. Thus, any privilege claim a former President might assert probably would be based on novel and untested legal grounds that should be initially considered by a court.

The bill also includes several provisions that are not in the Executive Order. Most of these provisions are intended to ensure more transparency and public accountability with respect to possible executive privilege claims. For example, a claim of privilege would be in a written public document signed by the incumbent or former President, as the case may be. This is consistent with the settled principle that the right to claim executive privilege is personal to the incumbent or former President and cannot

be delegated to their assistants, relatives, or descendants.

Mr. Speaker, I request that a summary of the Presidential Records Act Amendments of 2002 be placed in the CONGRESSIONAL RECORD.

THE PRESIDENTIAL RECORDS ACT AMENDMENTS OF 2002 SUMMARY

The Presidential Records Act Amendments of 2002 establishes statutory procedures to govern the assertion of executive privilege claims by a former or incumbent President over records covered by the Presidential Records Act. It preserves the constitutional right of a former or incumbent President to assert privilege claims, but does so in a way that complies with the framework and intent of the Presidential Records Act. It supersedes the procedures established in Executive Order 13233.

The bill requires the Archivist to provide advance notice of 20 working days to the former and incumbent Presidents before releasing presidential records in accordance with the provisions of the Act. The Archivist would release the records upon the expiration of this 20-day period, except any records (or parts of records) for which the former or incumbent President asserts a claim of privilege.

The Archivist could extend the 20-day period for an additional 20 days if the former or incumbent President demonstrated a need for additional time to review the records. Additional time should rarely be needed. The former and incumbent Presidents have access to the records and could conduct their reviews well before the time the records are ready for public release. The Archivist also would have thoroughly categorized and screened the records before a notice is issued, which should greatly facilitate reviews by the former and incumbent Presidents.

The bill requires that any claim of privilege be in writing and signed by the former or incumbent President, specify the records to which it applies, and state the nature and grounds of the privilege claim. Notices of the proposed release of records, as well as any privilege claims, would be made public.

If the former President submitted a privilege claim, the Archivist would withhold the records covered by that claim for another 20 working days. This would permit the former President to seek judicial enforcement of his privilege claim, as already provided for in the Presidential Records Act. After expiration of this 20-day period, the Archivist would release the records unless a court ordered their continued withholding. This approach places the burden of establishing a privilege claim on the former President. Privilege claims should be extremely rare, given the protections already built into the Act and the age of the records.

If the incumbent President submitted a privilege claim, the Archivist would withhold the records unless and until the incumbent President withdrew the claim or there was a final, non-appealable court order directing the Archivist to release the records. This approach recognizes the legal and practical reality that the Archivist must honor a privilege claim by an incumbent President.

The bill would apply similar procedures to requests for access to records by Congress and the courts. The time periods, however, would be modified to ensure compliance with deadlines imposed by subpoenas or other legal process. Also, the bill does not specify an outcome if the incumbent President claimed privilege in response to a congressional or judicial access request. Disputes between the incumbent president and either the Congress or the courts would be left for resolution on a case-by-case-basis.

The bill makes several conforming changes to existing provisions of the Presidential Records Act. It recognizes that authority to claim executive privilege is personal to a former or incumbent President and cannot be delegated to their representatives. This is consistent with current legal theory and practice concerning executive privilege. It also recognizes that a former or incumbent Vice President cannot claim presidential privileges.

Finally, the bill provides that Executive Order 13233 shall have no force or effect.

AMERICAN SERVICEMEMBER AND CIVILIAN PROTECTION ACT OF 2002

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. PAUL. Mr. Speaker, I rise today to introduce the ''American Servicemember and Civilian Protection Act of 2002.''

This bill expresses the sense of the Congress that President Bush should formally rescind the signature approving the International Criminal Court made on behalf of the United States, and should take necessary steps to prevent the establishment of that Court. It also prohibits funds made available by the United States Government from being used for the establishment or operation of the Court.

Perhaps the most significant part of the bill makes clear that any action taken by or on behalf of the Court against members of the United States Armed Forces shall be considered an act of aggression against the United States; and that any action taken by or on behalf of the Court against a United States citizen or national shall be considered an offense against the law of nations.

Mr. Speaker, today in New York and Rome celebrations are underway to mark the formal establishment of this International Criminal Court. Though the United States has not ratified the treaty establishing the Court, as required by the U.S. Constitution, this body will claim jurisdiction over every American citizen—military personnel and civilian alike.

The Court itself, however, is an illegitimate body even by the United Nations' own standards. The Statute of the International Criminal Court was enacted by a Conference of Diplomats convened by the United Nations General Assembly, whereas according to the UN Charter, the authority to create such a body lies only in the UN Security Council.

The International Criminal Court was established contrary to the American Declaration of Independence and the Constitution of the United States. It puts United States citizens in jeopardy of unlawful and unconstitutional criminal prosecution.

The International Criminal Court does not provide many of the Constitutional protections guaranteed every American citizen, including the right to trial by jury, the right to face your accuser, and the presumption of innocence, and the protection against double jeopardy.

Members of the United States Armed Forces are particularly at risk for politically motivated arrests, prosecutions, fines, and imprisonment for acts engaged in for the protection of the United States. These are the same brave men and women who place their lives on the line to protect and defend our Constitution. Do they not deserve the full protections of that same Constitution?

Mr. Speaker, I hope all members of this body will join me in opposing this illegitimate and illegal court by co-sponsoring the ''American Servicemember and Civilian Protection Act of 2002.''

ARMAC

HON. JOHNNY ISAKSON

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. ISAKSON. Mr. Speaker, it is my distinct pleasure to recognize the Atlanta Regional Military Affairs Council (ARMAC) on the occasion of their 50th year of serving the people of Georgia.

The Atlanta Regional Military Affairs Council was created to foster partnerships, education and a strong working relationship between the business and military communities in the Atlanta area. ARMAC was founded 50 years ago and works closely with each of the military branches. The Atlanta area is rich with military history and structure with its bases: NAS-Atlanta, Dobbins ARB, Fort McPherson and Fort Gillem. Additionally, the Atlanta area hosts reserve units of the Coast Guard and National Guard. The ARMAC executive committee consists of representatives from every major command in the Atlanta area.

ARMAC was founded as a partnership with the Atlanta Chamber of Commerce. In 1999, largely due to the Cobb County Chamber of Commerces' extraordinary support of the Military, ARMAC found a new home with the Cobb County Chamber of Commerce.

Mr. Speaker, as the Atlanta Regional Military Affairs Council begins its 50th year of service to the military and business communities in Atlanta, it is highly appropriate to recognize their efforts over the past 50 years, and wish them well as they begin their next 50 years of service to the people of Georgia.

HONORING SERGEANT DAVID WURTZ

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 11, 2002

Mr. CROWLEY. Mr. Speaker, I rise today to pay tribute to Army Sergeant David Wurtz, a brave man who is not just a hometown hero to his neighbors in College Point, minutes from Ground Zero in New York City, he is also a true American hero. Our nation owes Sergeant Wurtz a debt of gratitude for being among the first fearless U.S. soldiers on the ground fighting Al-Qaeda forces in Afghanistan. That patriotic duty came at a price, and Sergeant Wurtz was awarded the Purple Heart after returning from battle injured.

David Wurtz was born to Clem and Joan Wurtz in College Point 25 years ago, and is a proud hometown boy. He attended Flushing High School and Bleeker Junior High. His mother Joan describes young David as shy, but always a good student. He gave his parents a scare when one day, at age 17, he missed dinner, something he never did. After