

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. I 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