



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 13, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1255 – Presidential Records Act Amendments of 2007

(Rep. Waxman (D) California and 8 cosponsors)

The Administration understands that Presidential records have unique historic value and supports making such records available to the American people in a manner consistent with procedures established by the President for consideration of constitutionally based privileges. The Administration strongly opposes House passage of H.R. 1255 because it would be counterproductive and invite unnecessary litigation, is misguided, and would improperly impinge on the President's constitutional authority, in violation of settled separation of powers principles. Although the Administration is otherwise willing to work with interested parties to strike a meaningful balance of competing interests, if H.R. 1255 were to be presented to the President, his senior advisors would recommend that he veto the bill.

H.R. 1255 would create unintended incentives for more expansive claims of privilege and invite costly and time-consuming litigation. Currently, there is no set time limitation in which a former and incumbent President must process a request for Presidential records, and claims of privilege thus far have been rare. To date, in excess of 2.5 million pages of material have been approved for release, with only 9 documents totaling 64 pages withheld on a claim of privilege. However, as drafted, H.R. 1255 imposes a rigid time period of up to forty (40) days in which the former and incumbent Presidents must assert a claim of constitutionally based privilege, or automatically waive the right to do so. The requests for release of Presidential records often involve hundreds, if not thousands, of pages of material over which a claim of constitutionally based privilege may potentially be asserted. The bill, then, incentivizes former and incumbent Presidential administrations, out of an abundance of caution, to assert blanket claims of constitutionally based privilege over all material in the requested file, thereby creating further delay in the release of Presidential records. To the extent that such an assertion is unacceptable to a requester or other party, there is a great risk for further delay through costly and time-consuming litigation that can be expected to follow.

Additionally, contrary to assertions by the bill's sponsors, delays in processing and releasing Presidential records are primarily attributable to the ever increasing volume of and demand for such records and the inadequate number of trained archivists available at each Library to shepherd such requests. These factors have resulted in processing backlogs of up to five years prior to submission of those requests to the former and incumbent Presidents for consideration. This bill does nothing to address that backlog and, thus, is misguided.

Finally, the Administration has great concerns about the substantial impingement on separation of powers principles presented by H.R. 1255. Congress must act with great care when addressing the internal operations of a coordinate branch of government, and it may not interfere

with the President's exercise of his authority to establish procedures regarding the assertion of constitutionally based privileges. Executive privilege is not subject to Congressional regulation, but rather arises directly from the Constitution itself. Furthermore, a former President, although no longer a government official, may nonetheless assert constitutionally based privileges over his Presidential records. Inherent in the President's authority to invoke a constitutionally based privilege is the authority to direct the means by which it is invoked. Executive Order 13233, entitled "Further Implementation of the Presidential Records Act" (issued on November 1, 2001), represents the President's legitimate exercise of his authority to establish processes regulating the disclosure of records subject to the Presidential Records Act that may also be subject to constitutionally based privileges. Sections 2 and 3 of the bill encroach upon the President's constitutional authority by purporting to override the mechanisms established by the President for asserting a claim of constitutionally-based privilege against disclosure of Presidential records.

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