Calendar No. 212

110TH CONGRESS 1ST SESSION

S. 886

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.

IN THE SENATE OF THE UNITED STATES

March 14, 2007

Mr. BINGAMAN (for himself, Mr. LEAHY, Mr. SUNUNU, Mrs. FEINSTEIN, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

June 20, 2007

Reported by Mr. LIEBERMAN, without amendment

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,

1	SECTION 1. SHORT TITLE.				
2	This Act may be cited as the "Presidential Records				
3	Act Amendments of 2007".				
4	SEC. 2. PROCEDURES FOR CONSIDERATION OF CLAIMS OF				
5	CONSTITUTIONALLY BASED PRIVILEGE				
6	AGAINST DISCLOSURE.				
7	(a) In General.—Chapter 22 of title 44, United				
8	States Code, is amended by adding at the end the fol-				
9	lowing:				
10	"§ 2208. Claims of constitutionally based privilege				
11	against disclosure				
12	"(a)(1) When the Archivist determines under thi				
13	chapter to make available to the public any Presidentia				
14	record that has not previously been made available to the				
15	public, the Archivist shall—				
16	"(A) promptly provide notice of such deter-				
17	mination to—				
18	"(i) the former President during whose				
19	term of office the record was created; and				
20	"(ii) the incumbent President; and				
21	"(B) make the notice available to the public.				
22	"(2) The notice under paragraph (1)—				
23	"(A) shall be in writing; and				
24	"(B) shall include such information as may b				
25	prescribed in regulations issued by the Archivist.				

- 1 "(3)(A) Upon the expiration of the 20-day period (ex-
- 2 cepting Saturdays, Sundays, and legal public holidays) be-
- 3 ginning on the date the Archivist provides notice under
- 4 paragraph (1)(A), the Archivist shall make available to the
- 5 public the record covered by the notice, except any record
- 6 (or reasonably segregable part of a record) with respect
- 7 to which the Archivist receives from a former President
- 8 or the incumbent President notification of a claim of con-
- 9 stitutionally based privilege against disclosure under sub-
- 10 section (b).
- 11 "(B) A former President or the incumbent President
- 12 may extend the period under subparagraph (A) once for
- 13 not more than 20 additional days (excepting Saturdays,
- 14 Sundays, and legal public holidays) by filing with the Ar-
- 15 chivist a statement that such an extension is necessary
- 16 to allow an adequate review of the record.
- 17 "(C) Notwithstanding subparagraphs (A) and (B), if
- 18 the period under subparagraph (A), or any extension of
- 19 that period under subparagraph (B), would otherwise ex-
- 20 pire after January 19 and before July 20 of the year in
- 21 which the incumbent President first takes office, then such
- 22 period or extension, respectively, shall expire on July 20
- 23 of that year.
- 24 "(b)(1) For purposes of this section, any claim of
- 25 constitutionally based privilege against disclosure shall be

- 1 asserted personally by a former President or the incum-
- 2 bent President, as applicable.
- 3 "(2) A former President or the incumbent President
- 4 shall notify the Archivist, the Committee on Oversight and
- 5 Government Reform of the House of Representatives, and
- 6 the Committee on Homeland Security and Governmental
- 7 Affairs of the Senate of a privilege claim under paragraph
- 8 (1) on the same day that the claim is asserted under para-
- 9 graph (1).
- 10 ``(c)(1) The Archivist shall not make publicly avail-
- 11 able a Presidential record that is subject to a privilege
- 12 claim asserted by a former President until the expiration
- 13 of the 20-day period (excluding Saturdays, Sundays, and
- 14 legal public holidays) beginning on the date the Archivist
- 15 is notified of the claim.
- 16 "(2) Upon the expiration of such period the Archivist
- 17 shall make the record publicly available unless otherwise
- 18 directed by a court order in an action initiated by the
- 19 former President under section 2204(e).
- 20 "(d)(1) The Archivist shall not make publicly avail-
- 21 able a Presidential record that is subject to a privilege
- 22 claim asserted by the incumbent President unless—
- 23 "(A) the incumbent President withdraws the
- privilege claim; or

- 1 "(B) the Archivist is otherwise directed by a
- 2 final court order that is not subject to appeal.
- 3 "(2) This subsection shall not apply with respect to
- 4 any Presidential record required to be made available
- 5 under section 2205(2)(A) or (C).
- 6 "(e) The Archivist shall adjust any otherwise applica-
- 7 ble time period under this section as necessary to comply
- 8 with the return date of any congressional subpoena, judi-
- 9 cial subpoena, or judicial process.".
- 10 (b) Restrictions.—Section 2204 of title 44, United
- 11 States Code (relating to restrictions on access to presi-
- 12 dential records) is amended by adding at the end the fol-
- 13 lowing:
- 14 "(f) The Archivist shall not make available any origi-
- 15 nal presidential records to any individual claiming access
- 16 to any presidential record as a designated representative
- 17 under section 2205(3) if that individual has been convicted
- 18 of a crime relating to the review, retention, removal, or
- 19 destruction of records of the Archives.".
- 20 (c) Conforming Amendments.—(1) Section
- 21 2204(d) of title 44, United States Code, is amended by
- 22 inserting ", except section 2208," after "chapter".
- 23 (2) Section 2207 of title 44, United States Code, is
- 24 amended in the second sentence by inserting ", except sec-
- 25 tion 2208," after "chapter".

- 1 (d) CLERICAL AMENDMENT.—The table of sections
- 2 at the beginning of chapter 22 of title 44, United States
- 3 Code, 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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