

The Presidential Records Act Amendments of 2007

On March 1, 2007, Rep. Henry A. Waxman along with Reps. Platts, Clay, and Burton introduced H.R. 1255, the Presidential Records Act Amendments of 2007, to nullify a 2001 presidential executive order and restore public access to presidential records.

Overtaking the Bush Executive Order. Under the Presidential Records Act, presidential records are supposed to be released to historians and the public 12 years after the end of a presidential administration. In November 2001, President George W. Bush issued Executive Order 13233 which overturned an executive order issued by President Reagan and gave current and former presidents and vice presidents broad authority to withhold presidential records or delay their release indefinitely. The Presidential Records Act Amendments of 2007 would nullify the Bush executive order and establish procedures to ensure the timely release of presidential records.

Establishing a Deadline for Review of Records. Under the Bush executive order, the Archivist must wait for both the current and former president to approve the release of presidential records, a review process that can continue indefinitely. Under the bill, the current and former president would have a set time period of no longer than 40 business days to raise objections to the release of these records by the Archivist.

Limiting the Authority of Former Presidents to Withhold Presidential Records. Under the Reagan executive order, a former president could request that the incumbent president assert a claim of executive privilege and thereby stop the release of the records. If the incumbent president decided not to assert executive privilege, however, the records would be released unless the former president could persuade a court to uphold the former president's assertion of the privilege. The Bush executive order reversed this process and required the incumbent president to sustain the executive privilege claim of the former president unless a person seeking access could persuade a court to reject the claim. In effect, the Bush order gave former presidents virtually unlimited authority to withhold presidential records through assertions of executive privilege. The legislation would restore the Reagan approach, giving the incumbent president the discretion to reject ill-founded assertions of executive privilege by former presidents.

Requiring the President to Make Privilege Claims Personally. Under the Bush executive order, designees of the former president could assert privilege claims after the death of the president, in effect making the right to assert executive privilege an asset of the former president's estate. The bill would make clear that the right to claim executive privilege is personal to current and former presidents and cannot be bequeathed to assistants, relatives, or descendants.

Eliminating Executive Privilege Claims for Vice Presidents. In an unprecedented step, the Bush executive order authorized former vice presidents to assert executive privilege claims over vice presidential records. The bill restores the long-standing understanding that the right to assert executive privilege over presidential records is a right held only by presidents