

January 14, 2014

The Honorable Darrell Issa
U.S. House of Representatives
Oversight and Government Reform Committee
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings
U.S. House of Representatives
Oversight and Government Reform Committee
B350A Rayburn House Office Building
Washington, DC 2051

Dear Chairman Issa and Ranking Member Cummings:

As groups dedicated to greater accountability and transparency in government, we write in support of the framework H.R. 1233, the Presidential and Federal Records Act Amendments of 2013, provides for the assertion of privilege by a former president, and the protections the bill provides for other federal records.

Importantly, H.R. 1233 imposes a time limit in which a former president must assert any claim of privilege upon a determination of the Archivist to make available to the public a record of that former president. The bill also establishes processes for managing the disclosure of records upon the assertion of privilege by a former president, and grants to the incumbent president the power to decide whether or not to uphold any privilege claim of a former president, absent a court order to the contrary.

In the absence of legislation like H.R. 1233, the process for dealing with claims of privilege by a former president has been left to the discretion of each incoming president through the issuance of executive orders. Those orders have varied widely, and have had an impact on the public's access to presidential records. For example, President George W. Bush issued an executive order that permitted a former president to block the publication of any of his presidential records by the mere assertion of a privilege claim. By contrast, the executive order issued by President Obama gives to the incumbent president the final call on whether or not a claim of privilege will be asserted. We note some have criticized the bill on the grounds that it creates a new, constitutionally- based privilege that former presidents may assert over the records of their presidency. We do not believe this accurately describes the legislation. To the contrary, H.R. 1233 merely provides a process by which a claim of privilege can be resolved within the executive branch, but does not itself recognize a new privilege.

This legislation will ensure an orderly process for dealing with claims of privilege over the records of former presidents that affords the greatest degree of public access. The importance of presidential records cannot be overstated; they offer a unique window into our nation's history and allow us to learn from our past mistakes. The critically necessary preservation and protection of federal records is also addressed in the bill.

We appreciate your time and attention to this issue, and urge that you pass the Presidential and Federal Records Act Amendments of 2013. If you have any questions or would like to discuss this issue further, please contact Patrice McDermott, Director of OpenTheGovernment.org (pmcdermott@openthegovernment.org or 202-332-6736).

Sincerely,

American Association of Law Libraries

American Historical Association
American Library Association
Association of American Publishers
Association of Research Libraries
Center for Effective Government
Citizens for Responsibility and Ethics in Washington – CREW
Government Accountability Project – GAP
iSolon.org
Liberty Coalition
National Coalition Against Censorship
National Coalition for History
National Council on Public History
National Security Counselors
OpenTheGovernment.org
Project On Government Oversight – POGO
Society for Historians of American Foreign Relations
Society of American Archivists
Society of Professional Journalists
Special Libraries Association