

Sample Op-Ed Piece on Presidential Records Act Amendments of 2007 and Executive Order 13233

The following information was submitted to several national publications, but was not published. SAA provides it here as a template for efforts you may wish to take in promoting this important issue in regional and local media.

In March 2007, the U.S. House of Representatives passed H.R. 1255 – “Presidential Records Act Amendments of 2007” – with little fanfare. Since then, similar legislation has languished in the Senate. It is time for our Senators to act! The issue embodied in this bill should be of great interest to all members of the public. Specifically at question is the public’s full ownership of – and access to – the official records of the people’s highest elected representative, the President of the United States. This is a critical question for all citizens.

The transparency and accountability of the President to the people is a hallmark of our democracy. In a letter to W.T. Barry in 1822, James Madison wrote that “a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both.” In Washington the Senate must soon decide whether Madison’s farce or tragedy will unfold or whether the people’s right to knowledge about their government is going to be restored.

Out of the ordeal of Watergate came the Presidential Records Act in 1978 (44 U.S.C. 2201-2207). The Act established the principle that presidential papers represent the official records of activity by the executive office and, as such, are the property of the people through their government. The Act further mandates that the Archivist of the United States be responsible for the management and custody of, and access to, such records on behalf of the nation as a whole.

But in November 2001, President Bush signed Executive Order 13233, supposedly “further implementing” the Presidential Records Act. In fact, the Executive Order essentially cancelled the Act. Where previously the Archivist of the United States was responsible for determining which presidential records would be made available to the public 12 years after a president left office, Bush’s order places ultimate responsibility for decisions regarding access with any sitting president. In fact, the Executive Order gives every ex-President this power over the government records of his administration and extends it even further – to the family members and heirs of ex-Presidents, without apparent limit.

Spokespersons for the administration have denied this ability for family members and descendants to inherit the right to control access to presidential records. It is, however, clearly spelled out in the Executive Order, section 10, “Designation of Representative.... In the absence of any designated representative after the former President’s death or

disability, the family of the former President may designate a representative (or series or group of alternative representatives, as they in their discretion may determine) to act on the former President's behalf for purposes of the Act...."

The White House has further argued that this Order was needed to address concerns about national security issues and executive privilege with respect to presidential papers. This is simply not true. All such matters are more than adequately addressed in the Presidential Records Act. The professional staff of the National Archives has long experience working with sensitive records and is well-qualified to manage these things in a professional and independent manner.

Most recently the administration issued a statement criticizing the recently passed House bill, saying that it "would improperly impinge on the President's constitutional authority, in violation of settled separation of powers principles." Where was the separation of powers when the Executive Order dismantled an existing law? "Executive privilege is not subject to Congressional regulation," the White House asserts, but surely properly enacted legislation is not subject to Executive override.

The nation's archivists – non-partisan professionals who, among other things, are entrusted by society to ensure access to the records of the people's government at all levels – urge the Senate to reassert Congressional authority on behalf of all American citizens to ensure that ownership and control of the records of all presidencies are in the hands of the National Archives in trust for the people, and not in the control of former Presidents and their families. Reassertion of this authority would ensure that all Presidents, past and future, remain accountable. These are not the Presidents' records, but rather the records of the people's presidency.

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President, 2007-2008
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