

November 2, 2011

Chairman Darrell E. Issa
Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

BY FAX 202-225-3974 and 202-225-9852

Dear Chairman Issa and Ranking Member Cummings:

As groups dedicated to greater accountability and transparency in government, we write in support of the Presidential Records Act Amendments of 2011, H.R. 3071. This bill provides a framework for the assertion of privilege by a former president and clarifies the rights and obligations of the incumbent president and the Archivist of the United States in dealing with such claims.

Specifically, the bill 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. Further, the decision of the incumbent president to release a document over a claim of privilege by a former president controls, absent a court order to the contrary.

In the absence of legislation like H.R. 3071, 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.

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. We therefore strongly support passage of H.R. 3071.

Finally, we note some have criticized the bill on the ground 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. 3071 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.

Sincerely,

American Association of Law Libraries

American Association of University
Professors

American Booksellers Foundation
for Free Expression (ABFFE)

American Historical Association

American Library Association

American Society of News Editors

Association of American Publishers

Association of Centers for the
Study of Congress

Association of Research Libraries

Center for Media and Democracy

Citizens for Responsibility and Ethics
in Washington

Electronic Frontier Foundation

Government Accountability Project

iSolon.org

Knowledge Ecology International

Mid-Atlantic Regional Archives Conference

National Coalition Against Censorship

National Coalition for History

National Council on Public History

National Security Archive

OpenTheGovernment.org

Organization of American Historians

Project On Government Oversight

Public Citizen

Reporters Committee for Freedom
of the Press

Society for History in the Federal
Government

Society for Military History

Society of American Archivists

Society of Professional Journalists

Special Libraries Association

Utah Foundation for Open Government

William A. Wise Law Library - University
of Colorado Law School