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H. R. 1233

One Hundred Thirteenth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, two thousand and fourteen

An Act

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, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Presidential and Federal Records Act Amendments of 2014".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Presidential records.
Sec. 3. National Archives and Records Administration.
Sec. 4. Records management by Federal agencies.
Sec. 5. Disposal of records.
Sec. 6. Procedures to prevent unauthorized removal of classified records from National Archives.
Sec. 7. Repeal of provisions related to the National Study Commission on Records and Documents of Federal Officials.
Sec. 8. Pronoun amendments.
Sec. 9. Records management by the Archivist.
Sec. 10. Disclosure requirement for official business conducted using non-official electronic messaging account.

SEC. 2. PRESIDENTIAL RECORDS.

(a) PROCEDURES FOR CONSIDERATION OF CLAIMS OF CONSTITUTIONALLY BASED PRIVILEGE AGAINST DISCLOSURE.—

(1) AMENDMENT.—Chapter 22 of title 44, United States Code, is amended by adding at the end the following:

"§ 2208. Claims of constitutionally based privilege against disclosure

"(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—

"(A) promptly provide notice of such determination to—

"(i) the former President during whose term of office the record was created; and

"(ii) the incumbent President; and

"(B) make the notice available to the public.

"(2) The notice under paragraph (1)—

"(A) shall be in writing; and

"(B) shall include such information as may be prescribed in regulations issued by the Archivist.

"(3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).

"(B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays, Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.

"(C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.

"(b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former President or the incumbent President, as applicable.

"(2) A former President or the incumbent President shall notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of a privilege claim under paragraph (1) on the same day that the claim is asserted under such paragraph.

"(c)(1) If a claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) is asserted under subsection (b) by a former President, the Archivist shall consult with the incumbent President, as soon as practicable during the period specified in paragraph (2)(A), to determine whether the incumbent President will uphold the claim asserted by the former President.

"(2)(A) Not later than the end of the 30-day period beginning on the date on which the Archivist receives notification from a former President of the assertion of a claim of constitutionally based privilege against disclosure, the Archivist shall provide notice to the former President and the public of the decision of the incumbent President under paragraph (1) regarding the claim.

"(B) If the incumbent President upholds the claim of privilege asserted by the former President, the Archivist shall not make the Presidential record (or reasonably segregable part of a record) subject to the claim publicly available unless—

"(i) the incumbent President withdraws the decision upholding the claim of privilege asserted by the former President; or

"(ii) the Archivist is otherwise directed by a final court order that is not subject to appeal.

"(C) If the incumbent President determines not to uphold the claim of privilege asserted by the former President, or fails to make the determination under paragraph (1) before the end of the period specified in subparagraph (A), the Archivist shall release

the Presidential record subject to the claim at the end of the 90-day period beginning on the date on which the Archivist received notification of the claim, unless otherwise directed by a court order in an action initiated by the former President under section 2204(e) of this title or by a court order in another action in any Federal court.

"(d) The Archivist shall not make publicly available a Presidential record (or reasonably segregable part of a record) that is subject to a privilege claim asserted by the incumbent President unless—

"(1) the incumbent President withdraws the privilege claim; or

"(2) the Archivist is otherwise directed by a final court order that is not subject to appeal.

"(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpoena, judicial subpoena, or judicial process.".

(2) CONFORMING AMENDMENTS.—(A) Section 2204(d) of title 44, United States Code, is amended by inserting ", except section 2208," after "chapter".

(B) Section 2205 of title 44, United States Code, is amended—

(i) in the matter preceding paragraph (1), by striking "section 2204" and inserting "sections 2204 and 2208 of this title"; and

(ii) in paragraph (2)(A), by striking "subpena" and inserting "subpoena".

(C) Section 2207 of title 44, United States Code, is amended in the second sentence by inserting ", except section 2208," after "chapter".

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, is amended by adding at the end the following:

"2208. Claims of constitutionally based privilege against disclosure.".

(4) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (2)(C) shall be construed to—

(A) affect the requirement of section 2207 of title 44, United States Code, that Vice Presidential records shall be subject to chapter 22 of that title in the same manner as Presidential records; or

(B) affect any claim of constitutionally based privilege by a President or former President with respect to a Vice Presidential record.

(b) DEFINITIONS.—Section 2201 of title 44, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "memorandums" and inserting "memoranda";

(B) by striking "audio, audiovisual" and inserting "audio and visual records"; and

(C) by inserting ", whether in analog, digital, or any other form" after "mechanical recordations"; and

(2) in paragraph (2), by striking "advise and assist" and inserting "advise or assist".

(c) MANAGEMENT AND CUSTODY OF PRESIDENTIAL RECORDS.—Section 2203 of title 44, United States Code, is amended—

(1) in subsection (a), by striking "maintained" and inserting "preserved and maintained";

(2) in subsection (b), by striking "advise and assist" and inserting "advise or assist";

(3) by redesignating subsection (f) as subsection (g);

(4) by inserting after subsection (e) the following new subsection:

"(f) During a President's term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control, and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President's term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title."; and

(5) in subsection (g)(1), as so redesignated, by striking "Act" and inserting "chapter".

(d) RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS.—Section 2204 of title 44, United States Code, is amended by adding at the end the following new subsection:

"(f) The Archivist shall not make available any original Presidential records to any individual claiming access to any Presidential record as a designated representative under section 2205(3) of this title if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.".

(e) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.—

(1) AMENDMENT.—Chapter 22 of title 44, United States Code, as amended by subsection (a)(1), is further amended by adding at the end the following new section:

"§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

"(a) IN GENERAL.—The President, the Vice President, or a covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic message account unless the President, Vice President, or covered employee—

"(1) copies an official electronic messaging account of the President, Vice President, or covered employee in the original creation or transmission of the Presidential record or Vice Presidential record; or

"(2) forwards a complete copy of the Presidential or Vice Presidential record to an official electronic messaging account of the President, Vice President, or covered employee not later than 20 days after the original creation or transmission of the Presidential or Vice Presidential record.

"(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) by a covered employee (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

"(c) DEFINITIONS.—In this section:

"(1) COVERED EMPLOYEE.—The term 'covered employee' means—

"(A) the immediate staff of the President;

"(B) the immediate staff of the Vice President;

"(C) a unit or individual of the Executive Office of the President whose function is to advise and assist the President; and

"(D) a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President.

"(2) ELECTRONIC MESSAGES.—The term 'electronic messages' means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

"(3) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends electronic messages.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, as amended by subsection (a)(3), is further amended by adding at the end the following new item:

"2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts.".

SEC. 3. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) ACCEPTANCE OF RECORDS FOR HISTORICAL PRESERVATION.—Section 2107 of title 44, United States Code, is amended to read as follows:

"§ 2107. Acceptance of records for historical preservation

"(a) IN GENERAL.—When it appears to the Archivist to be in the public interest, the Archivist may—

"(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government;

"(2) direct and effect the transfer of records of a Federal agency determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government to the National Archives of the United States, as soon as practicable, and at a time mutually agreed upon by the Archivist and the head of that Federal agency not later than thirty years after such records were created or received by that agency, unless the head of such agency has certified in writing to the Archivist that such records must be retained in the custody of such agency for use in the conduct of the regular business of the agency;

"(3) direct and effect, with the approval of the head of the originating Federal agency, or if the existence of the agency has been terminated, with the approval of the head of that agency's successor in function, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or

associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

"(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

"(b) EARLY TRANSFER OF RECORDS.—The Archivist—

"(1) in consultation with the head of the originating Federal agency, is authorized to accept a copy of the records described in subsection (a)(2) that have been in existence for less than thirty years; and

"(2) may not disclose any such records until the expiration of—

"(A) the thirty-year period described in paragraph (1);

"(B) any longer period established by the Archivist by order; or

"(C) any shorter period agreed to by the originating Federal agency.".

(b) MATERIAL ACCEPTED FOR DEPOSIT.—Section 2111 of title 44, United States Code, is amended to read as follows:

"§ 2111. Material accepted for deposit

"(a) IN GENERAL.—When the Archivist considers it to be in the public interest the Archivist may accept for deposit—

"(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

"(2) recorded information (as such term is defined in section 3301(a)(2) of this title) from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

"(b) EXCEPTION.—This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.".

(c) PRESERVATION OF AUDIO AND VISUAL RECORDS.—

(1) IN GENERAL.—Section 2114 of title 44, United States Code, is amended to read as follows:

"§ 2114. Preservation of audio and visual records

"The Archivist may make and preserve audio and visual records, including motion-picture films, still photographs, and sound recordings, in analog, digital, or any other form, pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still photographs, and sound recordings in the Archivist's custody.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 21 of title 44, United States Code, is amended by striking the item for section 2114 and inserting the following:

"2114. Preservation of audio and visual records.".

(d) LEGAL STATUS OF REPRODUCTIONS; OFFICIAL SEAL; FEES FOR COPIES AND REPRODUCTIONS.—Section 2116(a) of title 44,

United States Code, is amended by inserting "digital," after "microphotographic,", each place it appears.

SEC. 4. RECORDS MANAGEMENT BY FEDERAL AGENCIES.

Section 3106 of title 44, United States Code, is amended to read as follows:

"§ 3106. Unlawful removal, destruction of records

"(a) FEDERAL AGENCY NOTIFICATION.—The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

"(b) ARCHIVIST NOTIFICATION.—In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.".

SEC. 5. DISPOSAL OF RECORDS.

(a) DEFINITION OF RECORDS.—Section 3301 of title 44, United States Code, is amended to read as follows:

"§ 3301. Definition of records

"(a) RECORDS DEFINED.—

"(1) IN GENERAL.—As used in this chapter, the term 'records'—

"(A) includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and

"(B) does not include—

"(i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or

"(ii) duplicate copies of records preserved only for convenience.

"(2) RECORDED INFORMATION DEFINED.—For purposes of paragraph (1), the term 'recorded information' includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

"(b) DETERMINATION OF DEFINITION.—The Archivist's determination whether recorded information, regardless of whether it

exists in physical, digital, or electronic form, is a record as defined in subsection (a) shall be binding on all Federal agencies.".

(b) REGULATIONS COVERING LISTS OF RECORDS FOR DISPOSAL, PROCEDURE FOR DISPOSAL, AND STANDARDS FOR REPRODUCTION.—Section 3302(3) of title 44, United States Code, is amended by striking "photographic or microphotographic processes" and inserting "photographic, microphotographic, or digital processes".

(c) LISTS AND SCHEDULES OF RECORDS TO BE SUBMITTED TO THE ARCHIVIST BY HEAD OF EACH GOVERNMENT AGENCY.—Section 3303(1) of title 44, United States Code, is amended by striking "photographed or microphotographed" and inserting "photographed, microphotographed, or digitized".

(d) EXAMINATION BY ARCHIVIST OF LISTS AND SCHEDULES OF RECORDS LACKING PRESERVATION VALUE; DISPOSAL OF RECORDS.—Section 3303a(c) of title 44, United States Code, is amended by striking "the Committee on Rules and Administration of the Senate and the Committee on House Oversight of the House of Representatives" and inserting "the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate".

(e) PHOTOGRAPHS OR MICROPHOTOGRAPHS OF RECORDS CONSIDERED AS ORIGINALS; CERTIFIED REPRODUCTIONS ADMISSIBLE IN EVIDENCE.—Section 3312 of title 44, United States Code, is amended—

(1) in the first sentence, by striking "Photographs or microphotographs of records" and inserting "Photographs, microphotographs of records, or digitized records"; and

(2) in the second sentence, by striking "photographs or microphotographs" and inserting "photographs, microphotographs, or digitized records", each place it appears.

SEC. 6. PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) CLASSIFIED RECORDS.—Not later than 90 days after the date of the enactment of this Act, the Archivist shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. Such procedures shall include, at a minimum, the following prohibitions:

(1) An individual, other than covered personnel, may not view classified records in any room that is not secure, except in the presence of National Archives and Records Administration personnel or under video surveillance.

(2) An individual, other than covered personnel, may not be left alone with classified records, unless that individual is under video surveillance.

(3) An individual, other than covered personnel, may not review classified records while possessing any cellular phone, electronic personal communication device, or any other devices capable of photographing, recording, or transferring images or content.

(4) An individual seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.

(5) All notes and other writings prepared by an individual, other than covered personnel, during the course of a review of classified records shall be retained by the National Archives

and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.

(b) DEFINITIONS.—In this section:

(1) COVERED PERSONNEL.—The term "covered personnel" means any individual—

(A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and

(B) who is either—

(i) an officer or employee of the United States Government with appropriate security clearances; or

(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the United States Government.

(2) RECORDS.—The term "records" has the meaning given that term under section 3301 of title 44, United States Code.

SEC. 7. REPEAL OF PROVISIONS RELATED TO THE NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS.

(a) IN GENERAL.—Sections 3315 through 3324 of title 44, United States Code, are repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of title 44, United States Code, is amended by striking the items relating to sections 3315 through 3324.

SEC. 8. PRONOUN AMENDMENTS.

Title 44, United States Code, is amended—

(1) in section 2116(c), by striking "his" and inserting "the Archivist's";

(2) in section 2201(2), by striking "his" and inserting "the President's", each place it appears;

(3) in section 2203—

(A) in subsection (a), by striking "his" and inserting "the President's";

(B) in subsection (b), by striking "his" and inserting "the President's";

(C) in subsection (c)—

(i) in the matter preceding paragraph (1)—

(I) by striking "his" and inserting "the President's"; and

(II) by striking "those of his Presidential records" and inserting "those Presidential records of such President"; and

(ii) in paragraph (2), by striking "he" and inserting "the Archivist";

(D) in subsection (d), by striking "he" and inserting "the Archivist";

(E) in subsection (e), by striking "he" and inserting "the Archivist"; and

(F) in subsection (g), as so redesignated, by striking "he" and inserting "the Archivist";

(4) in section 2204—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking "his" and inserting "a President's"; and

(ii) in paragraph (5), by striking "his" and inserting "the President's"; and

(B) in subsection (b)—

(i) in paragraph (1)(B), by striking "his" and inserting "the President's"; and

(ii) in paragraph (3)—

(I) by striking "his" the first place it appears and inserting "the Archivist's"; and

(II) by striking "his designee" and inserting "the Archivist's designee";

(5) in section 2205—

(A) in paragraph (2)(B), by striking "his" and inserting "the incumbent President's"; and

(B) in paragraph (3), by striking "his" and inserting "the former President's";

(6) in section 2901(11), by striking "his" and inserting "the Archivist's";

(7) in section 2904(c)(6), by striking "his" and inserting "the Archivist's";

(8) in section 2905(a)—

(A) by striking "He" and inserting "The Archivist"; and

(B) by striking "his" and inserting "the Archivist's";

(9) in section 3103, by striking "he" and inserting "the head of such agency";

(10) in section 3104—

(A) by striking "his" the first place it appears and inserting "such official's"; and

(B) by striking "him or his" and inserting "such official or such official's";

(11) in section 3105, by striking "he" and inserting "the head of such agency";

(12) in section 3302(1), by striking "him" and inserting "the Archivist"; and

(13) in section 3303a—

(A) in subsection (a)—

(i) by striking "him" and inserting "the Archivist", each place it appears; and

(ii) by striking "he" and inserting "the Archivist";

(B) in subsection (c), by striking "he" and inserting "the Archivist";

(C) in subsection (e), by striking "his" and inserting "the Archivist's"; and

(D) in subsection (f), by striking "he" and inserting "the Archivist".

SEC. 9. RECORDS MANAGEMENT BY THE ARCHIVIST.

(a) OBJECTIVES OF RECORDS MANAGEMENT.—Section 2902 of title 44, United States Code, is amended—

(1) in paragraph (4), by striking "creation and of records maintenance and use" and inserting "creation, maintenance, transfer, and use";

(2) in paragraph (6), by inserting after "Federal paperwork" the following: "and the transfer of records from Federal agencies to the National Archives of the United States in digital or electronic form to the greatest extent possible"; and

(3) in paragraph (7), by striking "the Administrator or".

(b) RECORDS CENTERS AND CENTRALIZED MICROFILMING SERVICES.—

(1) AMENDMENT.—Section 2907 of title 44, United States Code, is amended—

(A) in the section heading by inserting "**or digitization**" after "**microfilming**"; and

(B) by inserting "or digitization" after "microfilming".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 29 of title 44, United States Code, is amended in the item relating to section 2907 by inserting "or digitization" after "microfilming".

(c) GENERAL RESPONSIBILITIES FOR RECORDS MANAGEMENT.—Section 2904 of title 44, United States Code, is amended—

(1) in subsection (b), by striking "The Administrator" and inserting "The Archivist";

(2) in subsection (c)—

(A) in the matter preceding paragraph (1)—

(i) by striking "their" and inserting "the";

(ii) by striking "subsection (a) or (b), respectively" and inserting "subsections (a) and (b)";

(iii) by striking "and the Administrator"; and

(iv) by striking "each"; and

(B) in paragraph (8), by striking "or the Administrator (as the case may be)"; and

(3) subsection (d) is amended to read as follows:

"(d) The Archivist shall promulgate regulations requiring all Federal agencies to transfer all digital or electronic records to the National Archives of the United States in digital or electronic form to the greatest extent possible.".

(d) INSPECTION OF AGENCY RECORDS.—Section 2906 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "their respective" and inserting "the";

(ii) by striking "the Administrator of General Services and";

(iii) by striking "designee of either" and inserting "the Archivist's designee";

(iv) by striking "solely"; and

(v) by inserting after "for the improvement of records management practices and programs" the following: "and for determining whether the records of Federal agencies have sufficient value to warrant continued preservation or lack sufficient value to justify continued preservation";

(B) in paragraph (2)—

(i) by striking "the Administrator and"; and

(ii) by striking the second sentence; and

(C) in paragraph (3)—

(i) in the matter preceding subparagraph (A)—

(I) by striking "the Administrator or"; and

(II) by striking "designee of either" and inserting "Archivist's designee"; and

(ii) in subparagraph (A), by striking "the Administrator, the Archivist," and inserting "the Archivist"; and

(2) in subsection (b)—

(A) by striking "the Administrator and"; and

(B) by striking "designee of either" and inserting "Archivist's designee".

(e) REPORTS; CORRECTION OF VIOLATIONS.—Section 2115 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "their respective" and inserting "the";

(B) by striking "and the Administrator"; and

(C) by striking "each"; and

(2) in subsection (b)—

(A) by striking "either";

(B) by striking "or the Administrator", each place it appears; and

(C) by striking "inaugurated" and inserting "demonstrably commenced".

(f) RECORDS MANAGEMENT BY THE ARCHIVIST.—

(1) AMENDMENT.—The heading for chapter 29 of title 44, United States Code, is amended by striking "**AND BY THE ADMINISTRATOR OF GENERAL SERVICES**".

(2) CONFORMING AMENDMENT.—The table of chapters at the beginning of title 44, United States Code, is amended in the item related to chapter 29 by striking "and by the Administrator of General Services".

(g) ESTABLISHMENT OF PROGRAM OF MANAGEMENT.—Section 3102(2) of title 44, United States Code, is amended by striking "the Administrator of General Services and".

SEC. 10. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.

(a) AMENDMENT.—Chapter 29 of title 44, United States Code, is amended by adding at the end the following new section:

"§ 2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

"(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

"(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

"(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

"(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

"(c) DEFINITIONS.—In this section:

"(1) ELECTRONIC MESSAGES.—The term 'electronic messages' means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

"(2) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends electronic messages.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 105 of title 5.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 29 of title 44, United States Code, is amended by adding at the end the following new item:

"2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.