



March 14, 2022

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman,

Thank you for the opportunity to submit our comments for the record on the issue of presidential and federal records management. The National Coalition for History (NCH) is a consortium of over forty organizations that advocates on federal, state, and local legislative and regulatory issues. The coalition comprises a diverse set of organizations representing historians, archivists, researchers, teachers, students, documentary editors, preservationists, genealogists, political scientists, museum professionals, and other stakeholders.

Recent allegations regarding the mishandling and destruction of presidential records by former President Trump and members of his administration have underscored the inherent weaknesses in the Presidential Records Act (PRA) of 1978 (44 U.S.C. §2201-2209). We believe it is vital that the PRA be strengthened to ensure that such abuses of the law never reoccur. Effective enforcement measures, including appropriate penalties for noncompliance, are essential to establishing and maintaining sound record keeping practices.

Historians depend on the preservation of presidential records to educate the public and inform future generations. These records are also essential to smooth transitions in presidential administrations, which have traditionally taken place regardless of political party. Further, the preservation of records by any public entity is essential to democratic processes that depend upon appropriate public accountability.

This is not a partisan issue. We are not trying to redress actions that have already occurred. In fact, there may be no legal repercussions for the former president or members of his staff. Our concern is that this sort of behavior never be allowed to occur again, whether under a Democratic or Republican administration. Without access to the full record and routine business of an administration, future historians will lack the primary source material to present a full, rich, and accurate account of what occurred during this tumultuous time in our nation's history.

Unfortunately, while the PRA requires the preservation of presidential records, it fails to provide an effective means of enforcing compliance with the law. The role of the Archivist of the United States is strictly an advisory one. NARA provides incoming White House staff with extensive

training on their obligations under the PRA.¹ In addition, NARA constantly reminds them of their compliance responsibilities.² Therefore, White House staff cannot claim they are unaware of their obligations to preserve records under the PRA.

We are equally concerned about the alleged use by senior White House staff of non-official electronic message accounts to conduct official federal government business. The PRA's charge includes the preservation of memoranda, letters, emails, and other written and electronic records related to the president's official duties. The 2014 amendments to the PRA mandate that any non-official electronic messages be copied or forwarded by the individual to their federal government account no later than 20 days after the creation or transmission of the message. Again, mechanisms must be in place to ensure these requirements are being met.

Reliance on so-called "guardrails" such as administrative procedures, legal norms, and precedents that have been established by previous administrations has been ineffective. These values are just that: values. They have no bearing on those in power and their staff if they are determined to undermine the process of preserving the factual record of their administration. The law does not discriminate and requires the preservation of ALL records, including those that do not cast the administration in a positive light.

There must be greater oversight of compliance with the PRA, including such measures as annual reviews and inspections by the Archivist. Due to separation of powers concerns, NARA cannot enforce the law's requirements. Congress must exercise its oversight responsibilities over the White House with respect to compliance with the PRA.

Acts of destruction and noncompliance with the Presidential Records Act demonstrate the need to strengthen the principles of transparency and accountability that constitute the bedrock of our nation's democracy. Congress must act swiftly to address these concerns since they exacerbate existing divisions in our country.

Sincerely,



Lee White
Executive Director

CC: Ranking Member Rob Portman

¹ <https://www.archives.gov/files/presidential-records-guidance.pdf>.

² https://www.archives.gov/files/foia/Passantino%20Email%201%20of%202_redacted.pdf