

# United States Senate

WASHINGTON, DC 20510

April 29, 2026

David Warrington  
White House Counsel  
Executive Office of the President  
1600 Pennsylvania Ave. N.W  
Washington, DC 20500

Dear Mr. Warrington:

We are writing to express serious concern regarding the recent Department of Justice Office of Legal Counsel (OLC) opinion declaring the Administration’s view that the Presidential Records Act of 1978 (PRA) is unconstitutional and thus, “invalid in its entirety.”<sup>1</sup> This opinion was rendered at the request of your office which – taken in combination with the White House’s rapid issuance of a new records-preservation memorandum – indicates that ending compliance with the PRA is a priority for the White House.<sup>2</sup> Further, the OLC opinion does not appear connected to a dispute on the interpretation of federal law among multiple agencies or any contemplated policy change that necessitates clarification of the law.

The OLC opinion states that the PRA is unconstitutional because it exceeds Congress’s enumerated and implied powers and “aggrandizes” the Legislative Branch.<sup>3</sup> On April 2, 2026, your office seized on this opinion to implement a records policy that effectively replaces mandatory preservation requirements with discretionary guidelines. We are particularly troubled that this new memo weakens safeguards by establishing narrow, subjective criteria for preserving personal device communications, effectively granting staff the discretion to selectively preserve historical records.

As you are aware, the PRA was enacted in response to the Watergate scandal and sought to provide much-needed transparency to the execution of official duties at the White House without interfering with them.<sup>4</sup> The PRA achieved this by establishing public ownership of records created by presidents and their staff in the course of discharging their official duties.<sup>5</sup> Under the PRA, the United States “shall reserve and retain complete ownership, possession, and control of

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<sup>1</sup> *Constitutionality of the Presidential Records Act*, 50 Op. O.L.C. \_\_, at \*1 (Apr. 1, 2026), <https://www.justice.gov/olc> (hereafter, “*The Constitutionality of the PRA*”).

<sup>2</sup> Maegan Vazquez, *White House loosens rules for preserving presidential records*, WASHINGTON POST, (Apr. 24, 2026), <https://www.washingtonpost.com/national-security/2026/04/24/white-house-rewrites-rules-preserving-presidential-records/>.

<sup>3</sup> *Constitutionality of the Presidential Records Act*, 50 Op. O.L.C. \_\_, at \*1 (Apr. 1, 2026), <https://www.justice.gov/olc> (hereafter, “*The Constitutionality of the PRA*”).

<sup>4</sup> Patrick Eddington, *Paper Coup: How a DOJ Opinion Could Erase Evidence of Election Suppression and Solidify Presidential Authoritarianism*, CATO INST. (Apr. 7, 2026), <https://www.cato.org/blog/paper-coup-how-justice-department-opinion-could-erase-evidence-election-suppression-solidify>.

<sup>5</sup> Presidential Records Act (PRA) of 1978, NAT’L ARCHIVES, <https://www.archives.gov/presidential-libraries/laws/1978-act.html>.

Presidential records.”<sup>6</sup> The PRA requires a President to take all necessary steps “to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records.”<sup>7</sup>

The PRA also imposes a multi-step process on the President, including obtaining the written views of the National Archivist and providing 60 days’ notice to Congress, before any Presidential records may be destroyed.<sup>8</sup> This process reflects the care Congress took to ensure that historically important records are protected by preventing the President from negligently, recklessly, or willfully destroying this property of the U.S. government.<sup>9</sup> In further recognition of the important public interest in maintaining the public records associated with the work of the President, Congress modernized the PRA to regulate the use of non-official electronic message accounts by White House personnel.<sup>10</sup>

The PRA provides for the orderly retention and, when appropriate, public dissemination of presidential records. Under the PRA, when a President leaves office, the National Archivist assumes responsibility for the control of the former President’s records and creates an affirmative duty to make the records of a former president “available to public as rapidly and completely as possible.”<sup>11</sup> At the same time, the PRA provides the President with an opportunity to restrict public access to records for up to twelve years that are privileged, classified, or otherwise confidential.<sup>12</sup> Thus, Congress took great care in the drafting of the PRA to balance the President’s need to restrict access to sensitive material and material unrelated to his official duties, with the public’s right to transparency and Congress’ authority to conduct oversight on the most powerful elected office in the nation.

OLC typically provides advice to the Executive regarding “legal issues of particular complexity and importance or those about which two or more agencies are in disagreement.”<sup>13</sup> OLC is also responsible for reviewing and commenting on “the constitutionality of pending legislation.”<sup>14</sup> The April 1, 2026, OLC opinion is anomalous in that, for the first time ever, OLC has declared the PRA unconstitutional in its entirety,<sup>15</sup> coming to that conclusion in direct opposition to longstanding Supreme Court precedent.<sup>16</sup> Regardless of the Executive Branch’s internal deference to OLC opinions, OLC does not have the authority to override Supreme Court rulings

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<sup>6</sup> 44 U.S.C. § 2202.

<sup>7</sup> *Id.* § 2203(a).

<sup>8</sup> *Id.* § 2203(c)-(d).

<sup>9</sup> *Id.* § 2203(e).

<sup>10</sup> Presidential and Federal Records Act Amendments of 2014, Pub. L. 113-187, 128 Stat. 2003 (2014).

<sup>11</sup> 44 U.S.C. § 2203(g)(1).

<sup>12</sup> *Id.* § 2204.

<sup>13</sup> *About the Office of Legal Counsel*, DEP’T OF JUST., <https://www.justice.gov/olc> (last visited Apr. 7, 2026).

<sup>14</sup> *Id.*

<sup>15</sup> *The Constitutionality of the PRA*, at 51.

<sup>16</sup> *See id.* at 41 (stating that the Supreme Court’s separation of powers analysis in *Nixon* is “wrong”); *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425 (1977) (holding that the seizure and examination of records related to a former president that are still within the control of the executive does not violate the separation of powers).

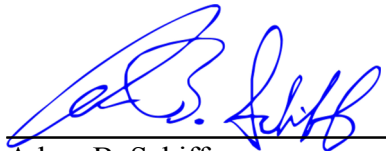
or unilaterally overturn laws passed by Congress.<sup>17</sup> The PRA remains binding law, and Congress was well within its power when it enacted the PRA.

We are deeply concerned that, pursuant to the April 1, 2026, OLC opinion and your subsequent April 2, 2026, memorandum, the President and his staff will unlawfully destroy important records covered by the PRA, significantly harming Congress' ability to fulfill its constitutional oversight responsibilities and thwarting the purpose and letter of the PRA as enacted and amended by Congress and multiple Administrations.

Accordingly, please confirm by May 8, 2026, that the White House will continue to abide by the lawfully-enacted PRA regardless of the April 1, 2026, OLC opinion. Additionally, given the first Trump Administration's mismanagement and delay in producing records to NARA,<sup>18</sup> and President Trump's unlawful personal retention and mismanagement of classified documents and other government records after his term expired, we request a briefing on the Trump Administration's records management procedures under the PRA in anticipation of the end of his second Administration on January 20, 2029.

We look forward to your response.

Sincerely,



Adam B. Schiff  
United States Senator



Charles E. Schumer  
United States Senator



Richard J. Durbin  
United States Senator

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<sup>17</sup> See e.g., U.S. CONST. art. I § 1; art. III § 1, 2; *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“[I]t is emphatically the province and duty of the judicial department”—and not the Executive Branch—“to say what the law is.”).

<sup>18</sup> Deb Riechmann, *Will Trump's Mishandling of Records Leave a Hole in History?*, AP (Jan. 16, 2021), <https://apnews.com/will-trumps-mishandling-of-records-leave-a-hole-in-history-65748b70e3cf3f7eecffa265da9ccae7> (“One person familiar with the transition said guidance typically emailed to executive branch employees explaining how to turn in equipment and pack up their offices was sent out in December, but quickly rescinded because Trump insisted on contesting the election. With little guidance, some staffers in the White House started quietly calling records workers to find out what to do.”)



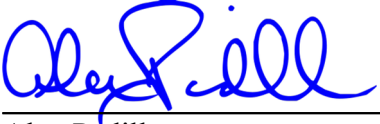
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Richard Blumenthal  
United States Senator



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Chris Van Hollen  
United States Senator



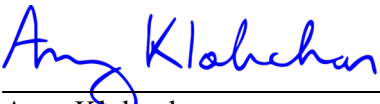
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Alex Padilla  
United States Senator



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Andy Kim  
United States Senator



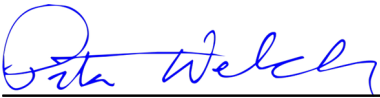
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Amy Klobuchar  
United States Senator



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Cory A. Booker  
United States Senator



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Peter Welch  
United States Senator



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Tammy Duckworth  
United States Senator



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Christopher A. Coons  
United States Senator



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Sheldon Whitehouse  
United States Senator



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Mazie K. Hirono  
United States Senator