

105TH CONGRESS
2D SESSION

H. RES. 432

Expressing the sense of the House of Representatives concerning the
President's assertions of executive privilege.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1998

Mr. DELAY submitted the following resolution; which was referred to the
Committee on the Judiciary

RESOLUTION

Expressing the sense of the House of Representatives
concerning the President's assertions of executive privilege.

Whereas a unanimous Supreme Court held in *United States v. Nixon* that “[a]bsent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material” that is essential to the enforcement of criminal statutes (418 U.S. 683, 706 (1974));

Whereas during the Watergate investigation, the Supreme Court unanimously held in *United States v. Nixon* that the judicial need for the tapes of President Nixon “shown by a demonstrated, specific need for evidence in a pending criminal trial” outweighed the President’s “general-

ized interest in confidentiality. . .” (418 U.S. 683, 713 (1974));

Whereas the Supreme Court further held in *United States v. Nixon* that “neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances” (418 U.S. 683, 706 (1974));

Whereas executive privilege is qualified, not absolute, and should “never serve as a means of shielding information regarding governmental operations that do not call ultimately for direct decisionmaking by the President” (In re Sealed Case, 116 F.3d 550 (D.C. Cir. 1997), reissued in unredacted form, 121 F.3d 729, 752 (D.C. Cir. 1997));

Whereas on September 28, 1994, Special Counsel to the President Lloyd N. Cutler, in a memorandum to the general counsels of all executive departments and agencies, wrote, “[i]n circumstances involving communications relating to investigations of personal wrongdoing by Government officials, it is our practice not to assert executive privilege, either in judicial proceedings or in congressional investigations and hearings”;

Whereas President Clinton is the first President since President Nixon (and the second in the history of the United States) to withhold information, under claims of executive privilege, from a grand jury investigating allegations of personal wrongdoing and possible crimes in the White House;

Whereas the President’s assertions of executive privilege have recently been denied by a United States district court;

Whereas in January 1998, President Clinton said that the “American people have a right to get answers” regarding certain matters being investigated by the Office of the Independent Counsel;

Whereas President Clinton has promised to give “as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations”; and

Whereas the people of the United States and their duly elected representatives have a right to judge for themselves the merits or demerits of the President’s claim of executive privilege: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that, in the interests of full disclosure consist-
3 ent with principles of openness in governmental oper-
4 ations, all records or documents (including legal memo-
5 randa, briefs, and motions) relating to any claims of exec-
6 utive privilege asserted by the President should be imme-
7 diately made publicly available.

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