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Democracy Dies in Darkness

Historians sue Trump administration to stop 'bonfire of records in the Rose Garden'

Screenshots are not "complete copies" of presidential records, they say

By **Gillian Brockell**

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Two historian groups, an independent archive and a watchdog organization are suing President Trump and other administration officials to ensure compliance with records laws, the groups announced this week. With Trump facing "potential legal and financial exposure once he leaves office," the groups said, "there is a growing risk that he will destroy records of his presidency before leaving."

The American Historical Association, the Society for Historians of American Foreign Relations and the National Security Archive and Citizens for Responsibility and Ethics in Washington — a frequent plaintiff in Trump-related legal challenges — joined in the lawsuit, which was filed in the U.S. District Court for the District of Columbia.

"Presidential records are always at risk because the law that's supposed to protect them is so weak," Tom Blanton, director of the National Security Archive, said in a statement. "The archive, historians and CREW are suing to put some backbone in the law and prevent any bonfire of records in the Rose Garden."

The White House did not respond to requests for comment. A spokesman for the National Archives and Records Administration said it could not comment on pending litigation.

The Presidential Records Act requires presidents and White House personnel to preserve all records of "the activities, deliberations, decisions, and policies that reflect the performance of the president's constitutional, statutory, or other official or ceremonial duties." The National Archives and Records Administration restricts these records from public view until at least five years after the end of an administration; some records can be withheld for much longer.

"Research rooted in these materials provides an unparalleled look inside an administration's activities that would, if absent, leave the world wholly reliant upon the memoirs and memories of those whose deeds we professionally investigate and evaluate," said James Grossman, director of the American Historical Association.

Presidential records and the keeping of them have long been a source of tension — and revelation. And the changes in how they are managed have been made with historians in mind. A president's papers used to be considered the personal property of that president, for better or for worse. And, sometimes, it really was for worse: As University of Massachusetts at Amherst professor Paul Musgrave recently explained in [The Washington Post](#), much of George Washington's papers were neglected by his heirs and destroyed by rats. Then came Richard M. Nixon's presidency; his records, which included the so-called smoking gun tape, were legally seized from him. After that, Congress passed the Presidential Records Act, which makes clear that a president's records belong to the public.

Conflicts between Trump and records laws have been occurring for nearly his entire term. Trump has a habit of ripping up paper he is finished with and throwing it in the trash or on the floor, according to a 2018 [Politico](#) story. That meant an entire team of records specialists were taping the pieces back together for preservation.

The lawsuit also focuses on officials, including Trump son-in-law and senior adviser Jared Kushner, who uses screenshots to keep records of communications on nonofficial messaging accounts such as WhatsApp or private email. According to the lawsuit, screenshots violate the Presidential Records Act because they do not include metadata and other attachments that could be of historical value.

The act was amended in 2014 to include specific instructions on electronic records. It prohibits all official communications sent on nonofficial messaging platforms, unless an official account is copied on the original transmission or it is forwarded to an official account within 20 days.

The historians say White House counsel incorrectly directed staff to preserve such records "via a screenshot or other means" in a February 2017

memo. white House counsel provided this memo during a [Senate briefing](#) in October 2017.

In [December 2018 testimony](#), Kushner's personal attorney Abbe Lowell told the House Oversight and Reform Committee that Kushner had used and continued to use WhatsApp to communicate with foreign leaders and that he used screenshots to preserve records of the communications. Kushner and his wife, Ivanka Trump, the president's daughter and a senior adviser, also used private email accounts for White House business, as did former deputy national security adviser K.T. McFarland and former White House chief strategist Stephen K. Bannon.

The lawsuit seeks to stop the disposal of any of these potential records without following proper protocols and to have the "screenshotting policy" rescinded.

This isn't the first time historians have sued over the administration's alleged violations of the records act. Three of the groups — CREW, SHAFR and the archive — have previously sued to challenge the use by White House officials of encrypted apps such as Signal and to allege President Trump has violated the records act by not keeping records of phone calls and meetings with foreign leaders.

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